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In The

Supreme Court of the United States

October Term, 1988

THE STATE OF OKLAHOMA *ex rel.*
COMMISSIONERS OF THE LAND OFFICE

Petitioner,

v.

CLAUDE R. BUTLER,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE OKLAHOMA SUPREME COURT

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DATED: September 21, 1988

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QUESTIONS PRESENTED FOR REVIEW:

1. Where lands are part of a federally created Trust and are sold by the Trustees (Petitioner herein) and where that notice of sale contained a reservation of "oil, gas and other minerals or mineral rights", does such a reservation include coal?

2. Should a determination of the question presented herein be reached where the Court has excluded resort to extrinsic evidence as to the intent of the parties?

3. Should a rule of construction known as "ejusdem generis" be applied where such a construction may result in a conveyance which is prohibited by statute and a diminishment of federally created trust assets?

4. May the ultra vires acts of employees of Trustees of a federally created Trust, result in a conveyance of Trust property which was not authorized by the Trustees?

5. Where the published notice of sale of a tract of land sold by Petitioners contained the following language,

> "at such sale there shall be reserved and retained unto the state forever, title to fifty percentum of all the oil, gas and other mineral rights in and under all lands that may be sold. The purchaser will receive an undivided fifty per centum of all the oil, gas, and other mineral rights in and under all tracts hereby offered. . . ."

Does the doctrine of ejusdem generis operate to convey only 50% of oil, gas and constituents thereof and therefore conveyed no coal interest to the purchaser?

THE LIST OF ALL PARTIES TO THE PROCEEDING IN THE OKLAHOMA SUPREME COURT

The State of Oklahoma ex rel.,
Commissioners of the Land Office – (Petitioner)

Claude R. Butler – (Respondent – Appellee)

Amicus Curiae

Aetna Life Insurance and Federal Land Bank of Wichita
(in support of the Petitioner)

Peabody Coal Company
(in support of Respondent – Appellee)

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THE OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS IN COURTS BELOW

The majority opinion, the dissenting opinion of Justice Opala with whom Vice Chief Judge Hargrave and Justice Lavender join and the dissenting opinion of Justice Alma Wilson are all reported as *The State of Oklahoma, ex rel., Commissioners of the Land Office v. Butler*, 753 P.2d 1334 (Okl. 1988).

The majority opinion of January 19, 1982, which was withdrawn upon rehearing and the specially concurring opinion of Justice Hargrave and joined by Justice Lavender and the dissent of Justice Simms joined by Justice Hodges and Special Justice Joe Young was reported in the Oklahoma Bar Journal Volume 53 ___ No. 3, dated January 23, 1982.

STATEMENT OF GROUNDS ON WHICH JURISDICTION IS INVOKED

The judgment sought to be reviewed is an opinion of the Supreme Court of the State of Oklahoma dated and entered December 8, 1987.

Rehearing was denied by order of the Oklahoma Supreme Court on May 24, 1988. Petitioner requested an extension of time to file its Petition for Certiorari on August 8th and Associate Justice Byron White granted extension of time for filing petition for writ of certiorari to and including September 21, 1988.

This Court has jurisdiction to review the judgment in question by writ of certiorari under authority of 28 U.S.C.A. Sec. 1257(3).

THE CONSTITUTIONAL AND STATUTORY PROVISIONS

The United States Statutes Act of Congress, June 16, 1906 34 U.S. Stat, at Large pp 267-278 Section 7, 8, 9, 10, 11, 12 and 13. (Appendix, D-1)

The Oklahoma Constitution Article VI Section 32 and Article XI Section 1 through 6. (Appendix, D-8)

Oklahoma Statutes – Section 6, Article 1, Chapter 28, Session Laws of Oklahoma – 1937, now codified as Title 64 O.S.A. Section 82. (Appendix, D-15)

64 O.S.A. (1941) Sections 94, 95, and 96. (Appendix, D-20)

STATEMENT OF THE CASE

Under the Enabling Act passed by the U.S. Congress in June of 1906 (Act of June 16, 1906, Ch. 3335, §§ 1-22, 34 U.S. Stat. 267-78), the State of Oklahoma was granted title in trust to 3.1 million acres of land for school, institution and public building purposes. Petitioner, The Commissioners of the Land Office, is the state-created agency specifically charged by the State of Oklahoma with the duty of carrying out these trust responsibilities.

In fulfilling its trust responsibilities, petitioner is restricted by the enabling act, its own Constitution,[1] and subsequent consistent state legislative acts from selling trust realty without reserving a portion of the minerals.[2] Petitioner has executed more than 11,000 patents affecting between 1.5 and 2.5 million acres of land containing provisions for reservation of mineral interests.

Among the trust land sales by Petitioner was one in 1938. Three of the patents subsequently issued from these sales were to respondent's predecessors in title. The patents specifically reserved 50% of the "oil, gas and other minerals".

The Commissioners of the Land Office are composed of five state office holders and at the time of the sale of subject lands they were the Governor, Secretary of State, State Auditor, State Superintendent of Public Instruction and the President of the State Board of Agriculture.

The resolution reflected in the minutes of Petitioner's regular September 12, 1938, meeting stated that the State shall *retain fifty percent of the mineral rights in and under the lands sold*. Petitioner subsequently advertised these tracts

---

[1] In accepting the land grants from the United States, Oklahoma constitutionally provided that: "The principal shall be a trust fund held by the State, and shall forever remain inviolate. It may increase, but shall never be diminished." OKLA. CONST., art. XI, § 2.

[2] *E.g.* OKLA. STAT. tit. 64, § 96 (1941) provides that in selling trust lands "the Commissioners of the Land Office shall, in all cases, reserve and retain forever title to fifty (50%) per centum of all the oil, gas and other mineral rights in and under lands so sold."

along with others according to the statutory scheme, and the Public Notice of Sale read in pertinent part:

> "At such sale there shall be reserved unto the State forever, title to fifty per centum of all the oil, gas and other mineral rights in and under all lands that may be sold. The purchaser will receive an undivided fifty per centum of all the oil, gas, and other mineral rights in and under all tracts hereby offered . . . "

At the time of the sale, Certificates of Purchase were issued. Later, Patents were granted on the three subject tracts. The certificates and the patents contain the following reservations:

> "fifty percentum of all the oil, gas and other mineral rights." – 1943.
> or
> "fifty percentum of all the oil, gas and other minerals and mineral rights." – 1957, 1961.

In 1977, Respondent, Claude R. Butler, brought an action in state court to quiet title to his interest in coal deposits found under lands granted to Respondent's predecessors in title in three patents issued by Petitioner in 1943, 1957 and 1961. Respondent contended the mineral reservation language in the patents only related to oil and gas and did not reserve any rights to other minerals including coal. Petitioner contended the language in the patents reserved 50% of all minerals under the land and that the Petitioner was limited by federal statute and the state Constitution from conveying any more interest in the minerals.

The Trial Court in Craig County, Oklahoma entered its Order sustaining Plaintiff's (Butler) motion for judgment where facts were not controverted. (Appendix C)

The Trial Court's Order contained conclusions of law that the reservation of the oil, gas and other mineral rights in the Patents reserves only the interest in and to all the oil, gas and other minerals produced as a component or constituent of oil or gas and specifically determined that there was no reservation of any other mineral including coal. The Trial Court also held that the reservation language is clear, explicit and unambiguous and that it is not necessary to consider any other evidence relating to the intention of the parties. The Trial Court therefore ordered that the Petitioner had reserved only an undivided fifty per centum (50%) of all the oil, gas and such other minerals as are produced as a component or constituent of oil and gas from a drilled oil or gas well, whether hydrocarbon or non-hydrocarbon, but not reserving any other mineral, including coal.

Petitioner perfected a timely appeal of the Trial Court's October 5, 1977, order. On January 19, 1982, the Oklahoma Supreme Court reversed the Trial Court judgment. Oklahoma Supreme Court Justice Marian Opala, writing for the majority, based the reversal on two principles, to-wit:

(1) The statutory scheme for sale of the subject lands required Petitioner to reserve fifty percent of all minerals and it was therefore powerless to convey to the purchaser all of the coal rights;

(2) The minutes of Petitioner's meeting on "September 11, [sic] 1938" (actually September 12) contained a resolution retaining fifty percent of the mineral rights. Justice Opala noted that when the notice of sale was published, the reservation had been changed to "oil, gas

and other mineral rights". The Patents and Certificates contained language similar to that in the notice of sale. Justice Opala stated that Petitioner clearly showed intent to reserve fifty percent of all minerals and that Petitioner's staff (who prepared the notice of sale) had no power to act in contravention of the clear intent of the Petitioner.

In a specially concurring opinion, Justice Rudolph Hargrave stated that the Trial Court's ruling should be reversed because of its application of a rule of construction known as ejusdem generis. Justice Hargrave urged that anytime a deed is held ambiguous enough to require the application of this rule of ejusdem generis, the Court should also entertain parol evidence as to the intent of the parties.

In a dissenting opinion, Justice Robert Simms urged that a patent is solemn evidence of title and that the Trial Court's analysis of the reservation language in the patents was correct.

Respondent timely requested a rehearing which was granted almost five years later. On December 8, 1987, the Supreme Court withdrew its January 19, 1982, opinion and affirmed the Trial Court's grant of summary judgment for Respondent. The 1982 Supreme Court ruling was by a 5-4 majority and the 1987 ruling was also by a 5-4 majority. This time Justice Simms wrote the majority opinion and Justice Opala the dissent. The opinions are very similar to those written by these Justices in 1982.

However in a published dissent to the denial of the Commissioners' subsequent request for rehearing, Justice Alma Wilson wrote that the Commissioners administer a

federally-created trust as set out in the Oklahoma Enabling Act. She stated that notice of sale provided for a reservation of fifty percentum of all the oil, gas and other mineral rights but the notice also stated that *the purchaser will receive an undivided fifty per centum of all the oil, gas and other mineral rights in and under the tracts hereby offered.*

Justice Wilson urged that under the doctrine of ejusdem generis the Respondent's predecessor in interest was not offered and did not receive any interest in coal and only received 50% of the oil, gas and the constituents thereof.

The Commissioners' request for rehearing was denied on May 24, 1988. Justice Byron White of the United States Supreme Court granted an extension of time for Petitioner to file its petition for writ of certiorari to September 21, 1988.

THE FEDERAL QUESTION

The Federal Question was first raised in the Trial Court to Petitioner's brief opposing Respondent's motion for summary judgment. Brief for Defendant, *Butler v. State of Oklahoma*, No. C-77-58 (Craig Co. Dist. Ct., Okla. Sept. 26, 1977). In its brief, Petitioner argued that the Trial Court was not confronted with a case between private parties but rather a case involving the "public interest". Petitioner urged that the Oklahoma Constitution required the trust fund should "forever remain inviolate". Citing *State of Oklahoma ex rel. Commissioners of the Land Office v. Armstrong*, 188 P.2d 347 (1947), Petitioner argued that the trust fund created by federal law was from grants and

donations made by the United States for the benefit of the state and could not be diminished. *Id.* at 2-3.

The Trial Court implicitly rejected the federal questions raised in granting summary judgment for Respondent. Appendix C.

The federal questions were raised again in the Oklahoma Supreme Court in the Brief of Appellant at 2, 6-8, *State of Oklahoma v. Butler,* No. 51609 (Okl. Sup. Ct. Oct. 27, 1978). The Oklahoma Supreme Court ultimately rejected arguments on the federal questions in its opinion granting a rehearing. Appendix A-13.

Justice Alma Wilson's dissenting opinion of May 24, 1988, very clearly focuses the federal questions raised. Appendix A-33.

REASONS FOR ALLOWANCE OF THE WRIT

As in *Lassen v. Arizona*, 395 U.S. 458 (1967), petitioner's cause arises out of duties attendant to congressional land grants under a statehood enabling act. "[T]he United States has a continuing interest in the adminstration of both the lands and the funds which derive from them." *Id.* at 585.

In violation of federal law, the Oklahoma Supreme Court opinion will "result in diminishing the benefits conferred by Congress". *Id.* at 590. Under the Oklahoma Enabling Act (Act of June 16, 1906, c 3335, §§ 7-12, 34 Stat. pp. 272-274) Petitioner is federally mandated to administer certain lands granted by the United States to Oklahoma in trust for the use and benefit of federally designated purposes. The Oklahoma Supreme Courts majority opinion of December 8, 1987, will result in a diminution of the Petitioner's "sacred trust" contrary to the federal trust status created by the Oklahoma Enabling Act and accepted by the state as a condition for statehood. Okla. Const., art. XI, §§ 1 and 2.

As of the audit for fiscal year 1987, the trust corpus includes 770,000 acres of agricultural land, $514,000,000 in cash and royalty interests in 1.5 million acres. This includes mineral interests retained when trust land was sold. The effects of the Oklahoma Supreme Court ruling on these trust interests is obvious. If the ruling is allowed to stand, the federal trust created for the benefit of Oklahoma schools will be deprived of interests not only in coal but in all minerals other than oil and gas and its derivatives which may be subsequently discovered under

these lands. It is not the intent of Congress or the State of Oklahoma that this should happen.

Respectfully submitted,

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Dated: September 21, 1988

APPENDIX A

IN THE SUPREME COURT OF
THE STATE OF OKLAHOMA

THE STATE OF OKLAHOMA, ex rel., COMMISSIONERS OF THE LAND OFFICE, Appellant, V. CLAUDE R. BUTLER, Appellee.	FOR OFFICIAL PUBLICATION (Filed Dec. 8, 1987) No. 51,609

ORDER GRANTING REHEARING

REHEARING GRANTED.

The opinion in the above cause promulgated January 19, 1982, at 53 OBJ 130, is hereby WITHDRAWN, and the opinion handed down this date is substituted therefore.

DONE BY THE SUPREME COURT IN THE CONFERENCE THIS 8th day of December 1987.

/s/ John B. Doolin
CHIEF JUSTICE

IN THE SUPREME COURT OF
THE STATE OF OKLAHOMA

THE STATE OF OKLAHOMA, ex rel., COMMISSIONERS OF THE LAND OFFICE, Appellant,	)	No. 51,609
V.	)	
CLAUDE R. BUTLER, Appellee.	)	

(Filed Dec. 8, 1987)

AN APPEAL FROM THE DISTRICT COURT OF CRAIG COUNTY, OKLAHOMA
HONORABLE WILLIAM J. WHISTLER,
DISTRICT JUDGE

Owner sought to remove a cloud on his estate in coal and on minerals other than oil and gas, its constituents and components. The trial court sustained owner's motion for summary judgment. Commissioners of the Land Office appeal.

AFFIRMED

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Lee R. West, J. Clayton
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Hall, Estill, Hardwick, Gable, Collingsworth & Nelson, P.C., For Amicus Curiae.

SIMMS, J:

The issue presented by this appeal is whether a reservation of an interest in "oil, gas and other mineral rights" includes coal. We hold it does not. Our holding is consistent with a long and unanimous line of cases. Our earlier opinion in this matter has previously been ordered withdrawn. Rehearing is granted, and this opinion is substituted therefor.

Claude Butler, the appellee, brought action to quiet title in the rights to the coal on land he owned in fee simple. His predecessors in interest acquired the property by three separate patents from the Commissioners of the Land Office by public sale of state-owned lands with notice as provided by law. One patent reserved to the state "an undivided fifty percentum of all oil, gas, and other mineral rights" and the other two patents contained reservations of "an undivided fifty percentum of all oil, gas and other minerals and mineral rights". The notice of sale stated that the land would be sold subject to the state's reservation of fifty percent of "all the oil, gas and other mineral rights". The Commissioners counterclaimed to quiet the state's claimed interest in the coal based on the reservations.

Mr. Butler sought summary judgment arguing that the phrase "oil, gas and other minerals" has an established meaning in Oklahoma; that it includes only oil and gas and other minerals produced as a component or constituent thereof. The Commissioners disagreed, urged

the Court to hold that the phrase was ambigious and to allow extrinsic evidence of the intent of the original parties at the time of the conveyances to be introduced.

The trial court found no significant distinction between the language of the patents, held that the reservations were unambigious and disallowed any extrinsic evidence of intent. Based on our decision in *Panhandle Cooperative Royalty Co. v. Cunningham*, Okl., 495 P.2d 108 (1972), the trial court held that the state had reserved only fifty percent of the oil, gas and minerals produced as constituents and components thereof, whether hydrocarbon or non-hydrocarbon, and that no other mineral, including coal, was reserved by the state. The trial court granted summary judgment in favor of Mr. Butler and quieted title to all the coal in him.

The Commissioners bring this appeal contending primarily that the trial court erred by disallowing extrinsic evidence to show intent of the original parties. They argue that the phrase "oil, gas and other minerals" is ambigious and that extrinsic evidence should therefore be allowed to show the intent of the original conveying parties. The same arguments have been presented and rejected repeatedly by this Court.

The phrase "oil, gas and other minerals" is, of course, common in the oil and gas industry. It, and its close variants, are standard terms which appear in very early oil and gas leases, and have commonly been used in fee conveyances and reservations, such as those before us today. The meaning of "oil, gas and other minerals" has been the subject of frequent and spirited litigation nationwide as well as in Oklahoma. Questions as to which

unspecified minerals are included within the phrase have been answered with differing results under different rationales. See, for instance the annotation Grant, Lease, Exception, or Reservation of "Oil, Gas, and Other Minerals", or the Like, as Including Coal or Metallic Ores, 59 ALR 3rd 116 (1974).

We have a consistent line of cases which offer no possible result except that a reservation of "oil, gas and other minerals", standing alone, does not include coal. See, e.g., *Barker v. Campbell-Ratcliff Land Co.*, 64 Okl. 249, 167 P. 468 (1917) - reservation of "mineral rights" includes oil and gas; *Beck v. Harvey*, 196 Okl. 270, 164 P.2d 399 (1946) - reservation of "mineral royalty" does not include gravel; *State, ex rel., Com'rs of Land Office v. Hendrix*, 196 Okl. 596, 167 P.2d 43 (1946) conveyance of an interest in and to all the oil, petroleum gas, coal, asphalt and all other minerals of every kind and character does not include gravel; *Cronkhite v. Falkenstein*, 352 P.2d 396 (1960) - mineral deed for "oil, gas and other minerals" does not include gypsum rock; and *Holland v. Dolese Co.*, Okl., 540 P.2d 549 (1976) - reservation of an interest in "the mineral rights" did not include quarried limestone.

In Oklahoma we have relied primarily on the rule of ejusdem generis to determine the scope of such mineral conveyances. Ejusdem generis is simply a rule of interpretation. It gives guidance to the ordinary insight that when specific words are followed by general words those specific words restrict the meaning of the general. Thus, where the phrase "other minerals" follows the enumeration of particular classes of minerals such as oil and gas, the general words will be construed as applicable only to

minerals of the same kind or class as those specifically named. *Wolf v. Blackwell Oil & Gas Co.*, 77 Okl. 81, 186 P. 484 (1920).

It is axiomatic that the interpretation of a written contract which is free from ambiguity is a judicial function and that oral testimony or other extrinsic evidence is not admissible to determine its meaning. The rules of interpretation of contract, both statutory as set forth in 15 O.S.1981, § 151, et seq., and non-statutory rules such ejusdem generis, are for use by the court to determine whether an ambiguity exists. An ambiguity in a written instrument allowing parol testimony does not appear until application of pertinent rules of interpretation to the face of the instrument leaves it genuinely uncertain which one of two or more meanings is the proper meaning. Whether words of a contract or conveyance or other written instrument are ambigious and therefore will support the need for extrinsic evidence is determined as a matter of law by the trial court. See, e.g., *Van Horn Drug Co. v. Noland*, Okl., 323 P.2d 366 (1958); *Panhandle Cooperative Royalty Co. v. Cunningham*, supra; *Morgan v. Wheeler*, Ks., 150 Kan. 661, 95 P.2d 320 (1939); *R & P Enterprises v. LaGuarta, Gavrel & Kirk, Inc.*, Tex., 596 S.W.2d 519 (1980). Appellants' suggestion that the rule of ejusdem generis is a rule to solve an ambiguity and therefore extrinsic evidence should be allowed, is in error. This rule, like all rules of interpretation, exists to aid the trial court's determination of whether or not an ambiguity is present.

There is no longer room for question in Oklahoma. The rule of law has evolved in this state that "oil, gas and other minerals" is not ambigious. "Oil, gas and other minerals" is not a description of the entire mineral estate.

The phrase has a certain and definite meaning: it includes only oil and gas and those minerals produced as constituents and components thereof.

In *Panhandle* supra, the Court upheld the trial court's determination that a mineral deed granting interest in "oil, gas and other minerals" was not ambigious and that extrinsic evidence of the parties' intent as to the inclusion of metallic minerals such as gold, silver and copper was inadmissible. There the defendants had also argued that the phrase was ambigious and included "all minerals", and that extrinsic evidence should be allowed to show the parties' intention to include metallic minerals. The Court there did not rely on ejusdem generis, although it recognized it as a rule of construction which is a useful part of our law, but the Court did cite and rely on *Cronkhite v. Falkenstein*, Okl., 352 P.2d 396 (1960), which was an ejusdem generis case.

In *Panhandle* the Court conducted a historical review of litigation on the issue which left no doubt that the phrase "other minerals" resulted from early litigation over rights to other distinct substances produced at the well head - particularly casinghead gas - under mineral deeds and conveyances of interest in "oil and/or gas" and "oil and gas". The phrase "other minerals" has a special purpose in extending the connotation of "oil and gas".

Applying the statutory rules of interpretation, 15 O.S. 1961, § 151, et seq., the Court held that the deed in question granted interest in oil and gas and other minerals produced as oil or gas or produced as a component or constituent thereof whether hydrocarbon or non-

hydrocarbon, but did not grant any other mineral or the right to produce any other mineral, including copper, silver, gold, or any other types of metallic ores or metallic minerals. *Panhandle*, supra at 113.

Following *Panhandle* the Court decided *Allen v. Farmers Union Cooperative Royalty Co.*, Okl., 538 P.2d 204 (1975), where metallic minerals were once again the subject of a quiet title action brought to determine whether they were included in a reservation of "all oil, gas and mineral rights". The same arguments which were presented and rejected in *Panhandle* and are now presented in the instant case, were before the Court in *Allen*, and were summarily rejected.

The appellants there criticized the decision in *Panhandle*, and contended that the reservation is unambigious and clearly meant "all minerals" of every kind. Relying on the rule of ejusdem generis the Court determined that a reservation of "all oil, gas and mineral rights" has essentially the same meaning as "all oil, gas and other minerals" as set forth in *Panhandle* . . . i.e., oil, gas and other minerals produced as a component or constituent thereof, whether hydrocarbon or non-hydrocarbon, and does not convey any other mineral or the right to produce any other mineral including copper, silver, gold or any other types of metallic ores or metallic minerals. The Court reaffirmed its holding in *Panhandle* that a deed granting oil, gas and other minerals is not ambigious and consequently no extrinsic evidence of an interpretative nature could be introduced to ascertain the intention of the parties.

While coal was not the mineral directly at issue in *Allen*, the question of coal ownership was passed on indirectly by the Court in considering the mineral conveyance from Farmers to Flag. Farmers owned an interest in "oil, gas and other minerals" and conveyed to Flag an.interest in the "oil, gas, coal, iron, and other minerals". Farmers, held the Court, could not convey to Flag an interest in metallic ores or minerals as Farmers owned only an interest in the "oil, gas and other minerals" and consequently could only convey to Flag an interest in such minerals as defined in the *Panhandle* case. at 209.

Certiorari was denied by this Court in *West v. Aetna Life Insurance Company*, (Okl.Ct.App.) 536 P.2d 393 (1975), wherein the Court of Appeals considered two groups of deeds in an action brought by plaintiffs to quiet title to metallic ores or minerals, including copper, gold, silver, and lead. The defendants were claiming under reservations contained in deeds of conveyance and also under grants in mineral deeds. At trial defendants offered to show by parol evidence the intention of the parties at the time of execution of the various grants and reservations. The trial court, however, refused to admit the evidence, holding the reservations and grants unambigious in law and quieted plaintiff's title in and to the mineral ores and metals. Addressing the defendants' arguments that the phrase "oil, gas and other minerals" is ambigious and should be subject to parol testimony, the Court of Appeals conducted a thorough review of the Oklahoma decisions, and stated that:

> "The courts of Oklahoma, both state and federal, over a course of more than half a century, [have

> adopted and applied] the rule of ejusdem generis . . . A review of the rulings of the Oklahoma Supreme Court thereon constitutes a record of unanimity of ruling and decree, beginning with the case of Kansas City Southern Railway Company v. Reinnam, 63 Okl. 69, 162 P. 726 (1917), and continuing through the years to the recent case of Panhandle Cooperative Royalty Co. v. Cunningham . . . The Supreme Court in construing contracts, statutes, deeds of conveyance, and other legal documents, have consistently adhered to the policy of 'stare decisis'." At 397.

Applying that rule in *West*, the Court of Appeals held that the deeds were not ambigious, and that the reservations did not include metallic ores or minerals and affirmed the trial court.

The certainty of the fixed meaning of "oil and gas and other minerals" in Oklahoma is also reflected by the Tenth Circuit decision of *Sloan v. Peabody Coal Co.*, 547 F.2d 115 (10th Cir.1977). There, plaintiff had conveyed the land to third parties who leased to the defendant for coal mining purposes. Plaintiff had reserved one-half of "all the oil, gas and minerals in, on, or under the surface of said lands". In its determination of whether the reservation included coal, the trial court had refused to consider plaintiff's extrinsic evidence to show the intent of the parties and relied instead on the rule of ejusdem generis in support of its conclusion that the language was unambigious as a matter of law. The parties had agreed that the issue was a legal one, that being whether under Oklahoma law the reservation included coal. Relying on Oklahoma decisions in *Allen*, *Panhandle*, and *West*, the Tenth Circuit affirmed the trial court's summary judgment for defendant and noted that the Oklahoma courts in their

application of statutory and decisional law, have held that the reservation of "oil, gas and other minerals" in a deed is not ambigious. Finding that the application of the rule of ejusdem generis is well established in Oklahoma, the Tenth Circuit found it was properly applied by the trial court and that the court was also correct in refusing to admit extrinsic evidence as to intent of the parties. The court also ruled that the chemical similarity between coal and oil does not lead to a different result or a different rule of construction.

We denied certiorari in *Hutchison v. McClure*, Okl.App., 621 P.2d 546 (1980), wherein the Court of Appeals held, in reliance on *Sloan* and 16 O.S. 1971, § 19, that a reservation of "oil, gas and other minerals" did not reserve an interest in coal.

The rule of law is clearly well settled in Oklahoma. "Oil, gas and other minerals" or similar phrases are not, standing alone, ambigious and do not allow the introduction of parol evidence. The meaning of the words must be derived from common understanding which means that "other minerals" shall be limited to minerals similar in kind and class to "oil and gas". Coal is not similar in kind and class to oil and gas. Appellant urges us to find that since all three belong to the class hydrocarbons, they are similar and belong together. It is not, however, the chemical composition which is important, but rather those traits which a man of common understanding would find to be similar or dissimilar. While coal has some chemical similarities to oil and gas, dissimilarities dominate. Coal is a solid substance extracted from the land in ways fundamentally different from those used to obtain oil, gas or a "component or constituent thereof", *Panhandle*, 495

P.2d, at 113. We therefore reaffirm our consistent position that "oil, gas and other minerals" and similar phrases are not ambigious. They do not include coal or other unspecified minerals.

Appellants also suggest that slight differences in the wording between the minutes of resolution of the Commisisoners to sell the property, the notice of sale, and the patent support their argument that extrinsic evidence should be allowed as to intent of the original parties.

It is fundamental that a patent is solemn evidence of title; it is a written public grant of the highest character, and high evidence of its own validity. Where government officers have issued a patent in due form which on its face is sufficient to convey title to land described, it is to be treated as valid in actions of law. The recitals of the patent are conclusive as to the estate conveyed, and no evidence can be received for construction thereof. A patent is deemed to have been issued regularly and the presumption exists that all usual necessary steps were taken before the title was perfected by patent. See, e.g., *Sharp v. City of Guthrie*, 49 Okl. 213, 152 P. 403 (1915); *Bagness v. Broderick*, 38 U.S. 436, 13 Pet. 436; 10 L.Ed. 235 (1839); *Colorado Coal & Iron Co. v. United States*, 123 U.S. 307, 55 S.Ct. 131, 31 L.Ed. 182 (1887); See, 1 O.S. 1981, § 11.

To look behind the patent to the minutes of the meeting would be totally unsupported by law. The notice, certificate of purchase, and patent were the specific acts of the Commissioners and the entire sale process was regular under 64 O.S.1941, §§ 95, 96, and in fact, the

words of the patent follow the statute, 64 O.S. 1941, § 82(d).

Appellants' final argument is that a sacred trust of the school lands existed for the benefit of the beneficiaries and that as part of that trust, Commissioners were forbidden by the Constitution to diminish the corpus. They contend that by conveying coal rights without specific remuneration therefor, a diminution of the corpus was effected which was beyond the Commissioners authority. In support of this argument, appellants rely on *Lassen v. Arizona*, 385 U.S. 458, 87 S.Ct. 584, 17 L.Ed.2d 515, which held that when trust lands are obtained by anyone, including the state, the trust must be compensated in money for the full appraised value. *Lassen* is inapplicable here for, inter alia, this land sold for more than its appraised value. Appellants' argument would mean that every time a new mineral was discovered on subject lands, appellants could argue in retrospect that at the time of sale it did not receive full compensation. We reject the argument and find the notion contrary to the language and spirit of the Enabling Act, the Oklahoma Constitution, and common sense.

The trial court correctly granted the motion for summary judgment and we affirm.

JUDGMENT AFFIRMED.

DOOLIN, C.J., HODGES, SIMMS, KAUGER, and SUMMERS, JJ., CONCUR. HARGRAVE, V.C.J., LAVENDER, OPALA, and WILSON, JJ., DISSENT.

IN THE SUPREME COURT OF
THE STATE OF OKLAHOMA

CLAUDE R. BUTLER, Appellee, v. THE STATE OF OKLAHOMA ex rel. the Commissioners of the Land Office of said State, Appellant.	)	No. 51, 609 (Filed Dec. 8, 1987) FOR OFFICIAL PUBLICATION

OPALA, J., with whom Hargrave, V.C.J., and Lavender, J., join, dissenting.

Today's opinion affirms summary judgment for the plaintiff and quiets his title to *all the coal rights* in the property in litigation. The court holds that a reservation by the Oklahoma Commissioners of the Land Office [Commissioners] of a fifty-percent interest in all the "oil, gas and other mineral rights" underlying state lands retains in the grantor solely oil and gas, its constituents and components. The court specifically excludes from the ambit of the reservation both coal and other unspecified minerals. I recede from today's pronouncement because, in my view, the Commissioners were without statutory power to convey *more than* fifty percent of "all minerals" in the state-owned land. I would hence reverse the trial court's summary judgment and hold that the Commissioners' reservation effectively withheld from the patent's grantee a one-half undivided interest in the coal rights.

FACTS

The appellee, Claude Butler [owner], sought to quiet his title to the coal rights in certain land he claimed to

own in fee simple. His predecessors in interest acquired title to the property from the Commissioners by three separate patents.[1] The first patent contained a reservation to the state of "an undivided fifty percentum of all the oil, gas and other mineral rights." The reservation in the other two patents was of "an undivided fifty percentum of all oil, gas and other minerals and mineral rights." The property was sold to the owner's predecessors in interest through a public sale of state-owned lands. In the notice of sale it was stated that the land would be sold subject to a reservation in the state of an undivided fifty percent of "all the oil, gas and other mineral rights."

The owner sought summary judgment contending that the sole issue tendered was the construction of the phrase "oil, gas and other minerals" and that the meaning of this phrase stood fixed as a matter of law. The Commissioners urged extrinsic evidence should be allowed to show the intention of the parties. By summary judgment the trial court quieted title to all the coal rights in the owner. Finding no significant distinction in the language of the reservations in the three patents, the court held that the state reserved *only fifty percent of the oil, gas and minerals produced as constituents and components thereof,* whether hydrocarbon and nonhydrocarbon, *but*

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[1] The first patent was dated November 29, 1943, the second August 20, 1957 and the third December 5, 1961.

All statutory references to the cluster of enactments governing conveyancing by the Commissioners are to the 1941 compilation, the statutes that govern the interests in contest here.

failed to retain any other minerals, including coal. According to the trial court, since the language in the patents and in the notice of sale was clear, explicit and unambiguous, the intention of the parties could be ascertained from the writings alone, without resorting to extrinsic evidence in a search for the parties' intent. The court took under consideration the pleadings, briefs of the parties and certified copies of pertinent documents on file in the court clerk's office. These instruments included the minutes of the Commissioners' meeting at which a resolution was adopted authorizing the sale of the lands in suit.

The Commissioners appeal from the adverse summary judgment. This court may review a lower court's ruling on a pure question of law and correct any misinterpretation or misapplication of the applicable legal norm. The error sought to be presented stands preserved for corrective relief.[2]

The property in suit, which had been acquired by the State through foreclosure proceedings, became a part of the corpus of the permanent school fund.[3] That fund may be invested in first mortgages upon farmlands within the state.[4] The land came to be sold by the State in accordance with the authority conferred by a 1937 statute.[5]

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[2] See 12 O.S. 1981 §630 and Southard v. Oil Equipment Corporation, Okl., 296 P.2d 780, 782 [1956].

[3] See Art. 11 § 2, Okl.Const.. Included in the permanent school fund are proceeds of the sale of public lands that have been or may be given by the United States government for the use and benefit of the common schools.

[4] Art. 11 § 6, Okl.Const.

[5] Okl.Sess.L. 1937, Ch. 28, Art. 1 § 6 [later codified in 64 O.S. 1941 § 82].

I

LEGISLATIVELY CONFERRED POWERS OF COMMISSIONERS

The validity of a Commissioners' sale of public land is governed by the power conferred by the legislature. The applicable statute, 64 O.S. 1941 § 82, must be construed to define the scope of the established authority. The statutory provisions empowering the Commissioners to issue patents *become a part of the contract* involved in the conveyance of the land. The rights of the parties must hence be determined in light of the statutory provisions.[6] The Commissioners' power to sell state lands or any interest in them is exercised validly *only* when their acts comply with the statutory mandate. Persons dealing with state functionaries are bound to know the extent of their authority[7] and are charged with *notice* of the Commission's statutory powers as well as with notice of the officials' nonconformity to the legally prescribed norms.[8]

The provisions of 64 O.S. 1941 § 96[9] set forth the terms of sale contracts and certificates of purchase for the sale of State land such as that involved in this case. This section provides in part, that *"the Commissioners of the Land Office shall, in all cases, reserve and retain forever title to fifty (50%) per centum of all the oil, gas and other mineral*

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[6] Hoover Equipment Co. v. Board of Tax Roll Cor., Okl., 436 P.2d 645, 649 [1968] and Baker v. Tulsa Building & Loan Ass'n., 179 Okl. 432, 66 P.2d 45, 50 [1936].

[7] State v. Frame, 200 Okl. 650, 199 P.2d 215, 217 [1948].

[8] State v. Phillips Petroleum Co., *infra* note 10.

[9] We do not quote here the text of 64 O.S. 1941 § 96 because only its subject and not its verbiage is relevant to our discussion of the issues.

rights in and under lands so sold." In *State v. Phillips Petroleum Co.*[10] we held that both this section and § 82(d)[11] must be followed, even though the two provisions may be viewed as somewhat contradictory. In order to give full effect to both of these sections, the §96(c) requirement, which calls for a fifty-percent reservation of the mineral estate, is to be regarded as controlling.

The ascertainment of legislative intent is the cardinal rule of statutory construction.[12] That intent is determined

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[10] Okl., 258 P.2d 1193, 1198 [1953].

[11] The terms of 64 O.S. 1941 § 82(d) provide in pertinent part:

> "The Commissioners of the Land Office shall reserve and retain forever the title to not less than forty (40%) per centum of all the oil, gas and other mineral rights in and under all lands to be sold; provided further, that the Commissioners of the Land Office are empowered to join in the execution of any oil, gas, or mineral lease on school lands, which have been sold and in which they have retained mineral interest, at their own discretion and without the necessity of advertising as required on State-owned lands. Such reservation is to be set out and included in all Certificates of Purchase and Patents issued to cover lands hereafter sold by the Commissioners of the Land Office. . . ."

[12] Riffe Petroleum Co. v. Great Nat. Corp., Inc., Okl., 614 P.2d 576, 579 [1980]; Lekan v. P & L Fire Protection Co., Okl., 609 P.2d 1289, 1292 [1980]; Midwest City v. Harris, Okl., 561 P.2d 1357, 1358 [1977]; Stemmons, Inc. v. Universal C.I.T. Credit Corporation, Okl., 301 P.2d 212, 216 [1956] and Adams v. Fry, 204 Okl. 407, 230 P.2d 915, 917 [1951].

from the whole act in light of its general purpose and object.[13] All of the statutory provisions dealing with the same general subject should be construed together and their provisions harmonized.[14] A statute should also be construed to render every word, sentence and provision operative. It is presumed that every provision of a statute was intended to have some useful purpose and should be given effect.[15] The title to an act is a proper guide in ascertaining legislative intent.[16]

Section 82 is one in a cluster of statutes under Title 64 which deal with sales, leases and deficiency judgments relating to real property owned by the State and administered by the Commissioners.[17] These statutes must all be construed together in order to arrive at the legislative intent in any particular section. The Commissioners' authority *vis-a-vis* mineral rights in state lands is also dealt with in this chapter, although some of the statutes refer to these rights in different terms.

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[13] Midwest City v. Harris, *supra* note 12 at 1358 and Adams v. Fry, *supra* note 12 at 917.

[14] Melton v. Quality Homes, Okl., 312 P.2d 476, 479 [1957] and Becknell v. State Industrial Court, Okl., 512 P.2d 1180, 1183 [1973].

[15] Matter of Ernest James C., Okl., 578P.2d 352, 355 [1978] and W. L. Street v. Bethany Firemen's Rel. and Pens. Fund, Okl., 555 P.2d 1295, 1298 [1976].

[16] Phillips v. Oklahoma Tax Com'n., Okl., 577 P.2d 1278, 1282 [1978] and Perry v. City of Oklahoma City, Okl., 470 P.2d 974, 979 [1970].

[17] For other statutory provisions, see 64 O.S. 1941 §§ 81 - 100.

(Continued on following page)

By the terms of § 92 the Commissioners are authorized to sell "oil, gas *or* other mineral leases" on state lands. This language suggests that the sale of mineral interests unrelated to oil and gas is covered by this statute. Reference is also made in § 82(d) to the execution of "oil, gas or mineral" leases by the State in the minerals reserved to it under this law. The title of the 1939 Act amending 82 also provides in general terms that the amendments relate to the preservation of mineral rights. The titles to these acts and the references to mineral rights in general throughout this grouping of related statutes emphatically demonstrate a legislative design to require the State's retention of *all* minerals in one half of the alienated lands.

A statute must also be construed so as to advance the beneficial purposes manifested by the legislature.[18] It seems clear that the statutorily required reservation was designed to preserve in the State a valuable interest in the minerals underlying state-owned lands. *This purpose is not met unless the reservation mandated by § 82 is construed to include all minerals in the retained subsurface estate.*

(Continued from previous page)

In this group, 64 O.S. 1981 § 91 commands that the Commissioners reserve "all oil, gas and minerals." The title of this section, enacted in 1963, provides that "all mineral rights [are] to be retained by the State." "Subsequent legislation may be considered as an aid in construing prior enactments upon the same subject." Letteer v. Conservancy District No. 30, Okl., 385 P.2d 796, 801 [1963].

[18] McGannon v. State, 33 Okl. 145, 124 P. 1063, 1067 [1912].

In sum, the quantum of interest conveyed by the patents here in contest must be measured by the extent of the Commissioners' legislatively conferred power to alienate land. The statutory provisions pursuant to which the Commissioners acted constitute an integral part of these patents. When the patents and applicable statutes are read together, it is crystal-clear that the phrase "oil, gas and other minerals" is indeed unambiguous. Its meaning *must* be divined not from extrinsic evidence but rather by reference to the restriction on the Commissioners' authority to transfer the State's interest in the land sold.

II

EJUSDEM GENERIS AND THE PHRASE "OIL, GAS AND OTHER MINERALS"

The owner contends *ejusdem generis* should be applied in rendering the meaning of the phrase "oil, gas and other minerals." Under this well-known canon of construction, when a general phrase is followed by a list of specific items, the scope of the phrase is restricted by the nature of the specific items listed.[19] Applying this rule to the language of § 82(d), the owner argues, the use of words "oil and gas" before the general phrase "and other minerals" requires that the "other minerals" be limited only to those closely related to oil and gas, i.e., those which are constituents or components of oil and gas.

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[19] Cronkhite v. Falkenstein, Okl., 352 P.2d 396, 399 [1960].

Ejusdem generis is *one* of many guides to statutory interpretation. *Other canons of construction are equally potent.* The *ejusdem generis* doctrine must yield to the rule that an act should be so construed as to carry out the object sought to be accomplished by it, so far as that object can be collected from the language of the statute. If the use of the *ejusdem generis* rule would *hinder or defeat* the plain legislative purpose or intent, it may not be applied in statutory construction.[20] It is apparent in the instant case that the application of *ejusdem generis* would defeat the clear intent of the § 82(d) command that the State retain a percentage of *all* mineral rights.

When construing the terms of § 82(d) together with § 96(c) our extant jurisprudence has implicitly recognized that the reservation contemplated by the legislature must encompass *all* minerals in the percentage interest required to be retained. Although the exact character of minerals included in the reservation was not specifically before this court in those cases, it is clear that we viewed the plain and ordinary meaning of the statutory language to embrace not only oil-and-gas, its constituents and components, but *all other* minerals as well.[21]

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[20] Couch v. State, 71 Okl.Cr. 223, 110 P.2d 613, 616 [1941] and Baccus v. Banks, 199 Okl. 647, 192 P.2d 683, 687, appeal dismissed 333 U.S. 858, 68 S.Ct. 743, 92 L.Ed. 1138, reh.den. 333 U.S. 883, 68 S.Ct. 911, 92 L.Ed. 1158 [1948].

[21] State v. Duggins, Okl., 258 P.2d 891, 894 [1953]; Penner v. State, Okl., 302 P.2d 144, 149-150 [1956]; State v. Phillips Petroleum Co., *supra* note 10 at 1199 and State v. Bright, Okl., 261 P.2d 875, 877 [1953].

In the present case, the Commissioners were required to reserve fifty percent of *all* minerals. They were hence *powerless* to pass to the owner *all* of the coal rights underlying the property in suit. Because the conveyance cannot be held to have alienated more than the quantum authorized by statute to be sold, the owner's predecessors in interest acquired only fifty percent of the coal. The remaining interest stood retained by the State's reservation.

III

PANHANDLE AND ITS EFFECT ON SUBSEQUENT CASE LAW

The phrase "oil, gas and other minerals" and similar phrases have been construed in a number of our decisions. Of primary significance is *Panhandle Cooperative Royalty Co. v. Cunningham.*[22] *Panhandle* dealt with the construction of three mineral deeds. The issue was whether *copper, silver, gold or other metallic ores or minerals* were included within the purview of the respective granting clauses in these deeds.

A. *Farmers-Flag Deed*

There were essentially two deed forms to be construed in *Panhandle.* The first one, the so-called Farmers-Flag deed, contained in the granting clause a conveyance of "oil, gas and other minerals." Other provisions in that deed specifically referred to oil and gas and the right to execute oil-and-gas leases. The *four-corners' doctrine of*

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[22] Okl., 495 P.2d 108, 113 [1972].

construction[23] was applied and all parts of the deed were carefully examined. It is through this analysis that the deed, taken as a whole, was determined *not* to be ambiguous. The clear intention of the parties divined from the face of the conveyance was to include in the phrase "oil, gas and other minerals" only those minerals that were produced as components and constituents of oil and gas. Although *Panhandle* recognized the *ejusdem generis* canon, we emphasized that it was not invoked in giving meaning to the Farmers-Flag deed. Rather, the intent of the parties to limit the effect of the granting clause to oil and gas and closely related minerals was ascertained from the clear language of the deed. *Panhandle*'s language that "in contracts dealing with the production and utilization of oil and gas, the expression 'and other minerals' has a special purpose in extending the connotation of 'oil and

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[23] The four-corners' doctrine refers to the rule that confines construction of a written instrument to its four corners. See Cleary Petroleum Corp. v. Harrison, Okl., 621 P.2d 528, 532 [1980]. Extrinsic evidence to be used in search of the instrument's intended meaning is admissible *only* when the language used is susceptible of multiple meanings and there is a dispute between the parties as to the intended meaning of the language in controversy. See Bryan v. Everett, Okl., 365 P.2d 146, 148 [1961] and Rose v. Cook, 207 Okl. 582, 250 P.2d 848, 850 [1952]. Extrinsic evidence was unnecessary in this case because the phrase "oil, gas and other minerals" *is not ambiguous when the statutes pertinent to their issuance are read in conjunction with the patents.*

gas' only"[24] – must be regarded *as restricted to deeds*, such as the Farmers-Flag, which may be said to express the parties' "preoccupation with oil and gas". The holding does not, as a matter of law, govern the construction of *all* instruments or material in which the phrase "oil, gas and other minerals" is used. We surely did not intend to pronounce that the quoted language, *standing alone*, must always be restricted in its meaning to "oil, gas and other minerals produced as oil or gas or produced as a component or constituent thereof, whether hydrocarbon or nonhydrocarbon."

B. *The Two Remaining Deeds*

My view of the *Panhandle's ratio decidendi* is reinforced by this court's construction of two other deeds under consideration there. The granting clauses in those deeds also embraced "oil, gas and other minerals." Because other clauses in the conveyances did not reflect a clear intention to pass only an estate in the oil, gas and related components, those deeds, viewed as a whole, were deemed to be ambiguous. The case was remanded with directions to consider extrinsic evidence in a search for the parties' intent.

C. *The Misperception of "Panhandle" and its Misapplication in Extant Caselaw*

The *Panhandle* message may have been misread. In *West v. Aetna Life Insurance Company*[25] a landowner

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[24] Panhandle Cooperative Royalty Co. v. Cunningham, *supra* note 22 at 113.

[25] Okl.App., 536 P.2d 393, 397-398 [1975].

sought to quiet title to his rights in metallic ores. The grantor-defendant had conveyed the property, but reserved the "oil, gas and other mineral rights." The defendant contended the reservation's language was ambiguous and extrinsic evidence should be allowed to show the intent of the parties. The court employed *ejusdem generis* to conclude that only minerals produced as components and constituents of oil and gas were reserved. The granting clause in *West* was similar to *Panhandle*'s Farmers-Flag deed. Unlike in *Panhandle*, the court in *West* did not allude to other provisions in the deed or in the reservation. Its failure so to do makes it unclear whether the four-corners' doctrine was given effect in like manner as in *Panhandle* to demonstrate that the reservation was free from ambiguity. *West* may have improperly relied on *Panhandle* for the application of *ejusdem generis*. The latter decision neither teaches nor suggests that *ejusdem generis* should be followed to the exclusion of other canons of construction.

The owner places even stronger reliance upon *Allen v. Farmers Union Co-Operative Royalty Co.*[26] *Allen*, which appears to rest on the same misperception of *Panhandle* as that found in *West*, does not cite *West*. The case similarly involved a deed that contained a reservation of "oil, gas and mineral rights". The trial court refused to consider the subsequent acts of the parties as extrinsic evidence of the intended meaning to be given the phrase. Instead, the rule of *ejusdem generis* was viewed as applicable. Its use resulted in the determination that the deed included only

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[26] Okl., 538 P.2d 204, 208-209 [1975].

minerals produced as components and constituents of oil and gas. We affirmed the trial court's decision. There was no allusion in *Allen* to other provisions in the deed. This is so because *Panhandle* appears to have been accepted as clothing the phrase "all oil, gas and other minerals" with a fixed meaning. *Panhandle*'s construction of the phrase was not intended as a *per se* definition *for use in all cases.* Rather, the holding there doubtless was meant to be of limited application to instances where the meaning of the language is clear *from the construction of the instrument as a whole.*

Allen also refers to another case in which the *ejusdem generis* canon was applied – *Cronkhite v. Falkenstein.*[27] *Cronkhite* involved a dispute over whether the phrase "oil, gas and other minerals" included gypsum rock. There, *ejusdem generis* was applied to conclude that gypsum was not within the grant. Extrinsic evidence was also considered in a search for the parties' intent. The opinion emphasized that *ejusdem generis* is not to be applied when the result reached would be contrary to the parties' intent.[28] The use of *ejusdem generis,* together with the admission of extrinsic evidence, both led in *Cronkhite* to the conclusion that the parties did not intend to include gypsum in the reservation. *Allen*'s and *West*'s

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[27] See *supra* note 19 at 399.

[28] Cronkhite v. Falkenstein, *supra* note 19 at 399.

reliance on *Cronkhite* to support the proposition that *ejusdem generis could be used in every case* to the exclusion of extrinsic evidence is clearly misplaced. *Cronkhite* stands for the principle that, when applicable, *ejusdem generis* may be used together with extrinsic evidence to arrive at the the parties' intention.

D. *Early Case law Provides Guidance to Proper Application of Ejusdem Generis*

A much earlier case, *Wolf v. Blackwell Oil & Gas Co.*,[29] demonstrates an approach similar to that used in *Cronkhite*. In *Wolf* a lease granted the right to produce all of the "oil, gas and other minerals." Elsewhere in the lease, the lessor reserved the rights to "1/10 of all the oil and other minerals" produced. Yet another clause gave the lessor the right to $100 per year for every well producing gas only. Although the *ejusdem generis* canon of construction was applied to determine what minerals were encompassed within the phrase "all oil, gas and other minerals," it is clear that the lease was considered in its entirety to then arrive at the conclusion that gas was excluded. Although *Wolf* may have left unclear the precise effect of *ejusdem generis*, that decision gives no ground for assuming that the rule may be used to the exclusion of the four-corners' doctrine.

Ejusdem generis was again invoked in *Vogel v. Cobb*[30] to ascertain if water was included in a grant of "oil,

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[29] 77 Okl. 81, 186 P. 484, 485 [1920].

[30] 193 Okl. 64, 141 P.2d 276, 280 [1943].

petroleum, gas, coal, asphalt, and all other minerals." The court considered extrinsic evidence as to the parties' intent.

None of the cases discussed thus far has dealt with the specific issue of whether coal is included within the phrase "oil, gas and other minerals." Most of them involve minerals very different in nature from oil and gas, i.e. metallic minerals.[31] A recent federal case, *Sloan v. Peabody Coal Co.*,[32] addressed itself to the specific question whether coal is embraced in the quoted language. No doubt relying on a flawed analysis of *Panhandle*, the federal court was led to conclude that coal was excluded from a reservation of "oil, gas and other minerals." *Sloan*, a federal case, is of course not binding on us here.

While today's opinion appears to verbally clad *ejusdem generis* as a canon of construction, *the court applies the doctrine as though it were an inflexible and universal rule of law*. Its pronouncement gives the phrase "oil, gas and other minerals" a *fixed* meaning that excludes every mineral other than the constituents and components of oil and gas. The very ascription of a fixed meaning to the phrase makes it one of universal application and hence a rule of law rather than a canon of construction. The purpose of *ejusdem generis* is not to accord *fixed and unalterable* meaning to some particular verbiage, but

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[31] Allen v. Farmers Union Co-Operative Royalty Co., *supra* note 26 and West v. Aetna Life Ins. Co., *supra* note 25.

[32] 547 F.2d 115, 116 [10th Cir. 1977].

rather to use it as an aid in construing language where specific things are named in a series that follow a general term. By its very nature, *ejusdem generis* must be employed only on a case-by-case basis. There is *no* authority for our acceptance of *ejusdem generis* as a universal rule of law. In fact, Panhandle specifically rejects the notion of the maxim's universality.

The court intimates today that the phrase "oil, gas and other minerals" is attributable to early litigation over rights to other distinct substances produced at the wellhead, particularly casinghead gas. Its account, which attempts to explain how the phrase has developed, is of doubtful historicity. I am persuaded that the verbiage might have been fashioned in the aftermath of *Barker v. Campbell-Ratcliff Land Co.*,[33] where the court treated a reservation of "all mineral rights" as ambiguous and hence subject to further probing by parol evidence. It was after *Barker* that cautious conveyancers in the 1920s and 1930s began drafting "oil, gas and other minerals" to denote in deeds that oil and gas rights were either granted, excepted or reserved.[34]

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[33] 64 Okl. 249, 167 P. 468, 469 [1917].

[34] See Bell, The Continuing Problem of 'Other Minerals:' Oklahoma Needs a Uniform Rule of Construction, 56 OBJ 2919 (footnote 4 at page 2928)[1985] and Emery, What Surface is Mineral and What Mineral is Surface, 12 Okla.L.Rev. 499, 512 [1959].

IV

ACTS OF COMMISSIONERS CONTROL OVER NOTICE OF SALE

Another reason exists for concluding that the Commissioners did not have the power to alienate more than fifty percent of the coal rights. The provisions of § 82(a) require the Commissioners to adopt a resolution authorizing the sale of any land pursuant to this statute. The record in this case contains a certified copy of the minutes of the Commissioners' meeting held on September 11, 1938. A resolution adopted at that meeting approved the sale of the land involved in this suit. The resolution, which had been voted upon and approved by the Commissioners, stated that the State *shall retain fifty percent of the mineral rights in and under the lands sold.* When the notice of sale was published, it included language different from that found in the resolution. The phrase "all mineral rights" had been changed to "oil, gas and other mineral rights." The patents and certificates of sale used verbiage similar to that in the notice of sale. The Commissioners' official action and their intent with respect to this property's sale clearly was to retain fifty percent of *all* minerals.

The notice of sale and the patents issued cannot be allowed to control over the specific actions of the Commissioners. The Commission staff was without authority to act in contravention of the Commissioners' intent clearly expressed in their resolution. One who purchases an interest in school lands without making inquiry as to the Commissioners' compliance with the terms of their trust, is charged with notice of all defects and irregularities which exist in the sale proceedings and hence

cannot claim the status of a bona fide purchaser.[35] The original purchasers of this land were deemed to have notice of the discrepancy between the official action by the Commissioners and the language of the reservation contained in the notice of sale and in the patents. They cannot be said to have acquired more than fifty percent of the rights in all minerals, including coal. Subsequent purchasers also are charged with notice of those defects or irregularities in sale proceedings which are apparent upon examination of the records. The law draws here a close analogy to the principles that apply in guardianship sales.[36]

The court today rejects out of hand the long-held view that the permissible search for the quantum of interest conveyed by the State may extend beyond the four corners of the State's conveyance to include the notices as well as the Commission minutes. Its refusal to allow an examination of critical and foundational instruments *dehors* the patents is entirely without support in legal precedent and appears to be contrary to *all* extant jurisprudence.[37]

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[35] State v. Phillips Petroleum Co., *supra* note 10 at 1199; State v. Duggins, *supra* note 21 at 894 and State v. Bright, *supra* note 21 at 877-878.

[36] State v. Phillips Petroleum Co., *supra* note 10 at 1199; Selement v. Gibson, 171 Okl. 513, 43 P.2d 759, 760-761 [1935]; Lowery v. Richards, 120 Okl. 261, 248 P. 622, 624-625 [1926]; In re Standwaitie's Estate, 73 Okl. 255, 175 P. 542, 543-544 [1918] and Burton v. Compton, 50 Okl. 365, 150 P. 1080, 1082 [1915].

[37] See State v. Phillips Petroleum Co., *supra* note 10.

Because I cannot countenance the court's mistaken reliance on *ejusdem generis* for its conclusion that the phrase "oil, gas and other minerals" has a universally fixed legal meaning whose definitional perimeter embraces only oil, gas and only those minerals that are produced as their constituents and components, I must stand in dissent from today's pronouncement.

IN THE SUPREME COURT OF
THE STATE OF OKLAHOMA

THE STATE OF OKLAHOMA, ex rel., COMMISSIONERS OF THE LAND OFFICE, Appellant, v. CLAUDE R. BUTLER, Appellee.	))))))))	FOR OFFICIAL PUBLICATION No. 51,609 (Filed May 24, 1988)

ALMA WILSON, Justice, *dissenting:*

Appellee brought this action seeking to establish ownership rights to coal underlying land acquired from the Commissioners of the Land Office of the State of Oklahoma by Appellee's predecessors in interest.

By virtue of 64 O.S. 1981 § 1, Appellant, the Commissioners of the Land Office of the State of Oklahoma, administers a federally created trust as set out in the Oklahoma Enabling Act. This trust originated from lands and monies which were engifted to the State at the time it

was admitted to the Union in 1907. Investment of permanent trust funds includes first mortgages upon improved farm land within the State of Oklahoma. In the event that such mortgaged property is foreclosed, the title to the land is vested in the State and this land becomes a part of the corpus of the trust. The beneficiaries of this trust are the common schools of the State of Oklahoma.

As a condition of statehood the State of Oklahoma pledged its faith to preserve the lands and monies of this sacred trust for the beneficiaries to whom it is dedicated. Article XI, § 1 of the Oklahoma Constitution, provides as follows:

> " . . . The principal shall be deemed a trust fund held by the State, and shall forever remain inviolate. *It may be increased, but shall never be diminished.* The State shall reimburse said permanent school fund for all losses thereof which may in any manner occur. . . ." [*Emphasis added.*]

The Commissioners, as trustees of the school land trust, thus, do not stand in the same shoes as an ordinary landowner, but must carry out their constitutional duty to the trust in a way which will maximize revenue to uphold their obligations to the sacred trust. *Oklahoma Education Association, Inc. v. Honorable George Nigh,* 642 P.2d 230 (Okla. 1982). Although the Commissioners are to be guided by the legislative enactments in the administration of the trust, these statutes cannot contravene the constitutional mandate to preserve the trust. Indeed, it must be presumed that the Legislature predicated these statutes upon the constitutional conditions imposed upon the trust and intended to maximize the preservation of valuable rights for the benefit of the common schools of

this State. The express designation of the school lands and funds as a "sacred trust" has the effect of irrevocably incorporating into the Enabling Act, the Oklahoma Constitution, and conditions of the grant, all the rules of law and duties governing the administration of trusts. No act of the Legislature can validly alter, modify or diminish the State's duty as Trustee of the school land trust to administer it in a manner most beneficial to the trust estate and in a manner which obtains the maximum benefit in return from the use of trust property or loan of trust funds.

In the present case, the Commissioners' authority to sell state school lands or any interest in them must be viewed, first, within the mandate of the constitutional grant; and secondly, within the context of statutory procedures for the administration of the trust construed in a manner consistent with the constitutional trust mandate; and thirdly, within the terms of the sale contract and certificate of purchase. According to statutory procedures, the following offer appeared in the notice for the sale of the state owned property which is the subject of this appeal:

> "At such sale there shall be reserved and retained unto the state forever, title to fifty percentum of all the oil, gas and other mineral rights in and under all lands that may be sold. *The purchaser will receive an undivided fifty per centum of all the oil, gas, and other mineral rights in and under all tracts hereby offered. . . .*"

Taking into consideration the constitutional trust mandate, consistent legislative enactments pertaining thereto, and the language in the granting clause under the doctrine of *ejusdem generis*, the only mineral rights received by Appellee upon acceptance of the offer amounted to

50% of oil, gas and the constituents thereof. Appellee was not offered and did not receive any interest in coal upon his purchase of the tracts in question. The majority's holding to the contrary results in a deprivation of valuable minerals owned by the school land trust estate and diminishes the corpus of the trust funds in violation of the Enabling Act, the Constitution and the laws of the State of Oklahoma.

I dissent.

APPENDIX B

IN THE SUPREME COURT OF
THE STATE OF OKLAHOMA

CLAUDE R. BUTLER,
Appellee,

v.

THE STATE OF OKLAHOMA ex rel. The Commissioners of the Land Office of said State,
Appellant.

No. 51,609

FOR OFFICIAL PUBLICATION

(Filed Jan. 19, 1982)

APPEAL FROM THE DISTRICT COURT,
CRAIG COUNTY, OKLAHOMA

Hon. William J. Whistler, Judge

Owner sought to remove a cloud on his estate in coal and on minerals other than oil-and-gas, its constituents and components. The trial court sustained owner's motion for summary judgment. The State ex rel. Commissioners of the Land Office appeals.

REVERSED AND REMANDED

Paul DeGraffenreid and
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Oklahoma City, Oklahoma — For Appellant

John S. Athens, Russell H.
Harbaugh, Jr. and Douglas L.
Inhofe, Esqs.
Conner, Winters, Ballaine,
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Vinita, Oklahoma — For Appellee

Lee R. West, J. Clayton La Grone,
Richard A. Paschal and James E.
Green, Jr., Esqs.
Hall, Estill, Hardwick, Gable,
Collingsworth and Nelson
Tulsa, Oklahoma For Amicus Curiae

OPALA, J.:

The issue presented is whether the reservation by the Oklahoma Commissioners of the Land Office [Commissioners] of a fifty percent interest in all the "oil, gas and other mineral rights" in state lands includes all minerals thereunder or is limited to oil-and-gas, its constituents and components. We hold that since the Commissioners were statutorily empowered to convey *no* more than fifty percent of "all minerals" in the state-owned land, the reservation was not limited to oil-and-gas, its constituents and components.

FACTS

The appellee, Claude R. Butler [Owner], sought to quiet title in the coal rights in certain land he owned in fee simple. His predecessors in interest acquired title to the property from the Commissioners by three separate patents.[1] The first patent contained a reservation to the state of "an undivided fifty percentum of all the oil, gas and other mineral rights". The reservation in the other two patents was of "an undivided fifty percentum of all oil, gas and other minerals and mineral rights". The property was sold to the owner's predecessors in interest through a public sale of state-owned lands. In the notice of sale it was stated that the land would be sold subject to

a reservation in the state of an undivided fifty percent of "all the oil, gas and other mineral rights".

The owner sought summary judgment contending that the sole issue tendered was the construction of the phrase "oil, gas and other minerals" and that the meaning of this phrase was fixed as a matter of law. The Commissioners urged extrinsic evidence should be allowed to show the intention of the parties. The trial court granted summary judgment and quieted title to all the coal rights in the owners. Finding no significant distinction between the language of the reservations in the three patents, the trial court held that the state reserved only fifty percent of the oil, gas and minerals produced as constituents and components thereof, whether hydrocarbon or nonhydrocarbon, but failed to reserve any other minerals, including coal. The court further held that the language in the patents and in the notice of sale was clear, explicit and unambiguous and the intention of the parties could be ascertained from the writings alone, without resort to extrinsic evidence to determine the intent of the parties. The court took under consideration the pleadings, briefs of the parties and certified copies of pertinent documents on file in the court clerk's office. These documents included the minutes of the Commissioners' meeting at which a resolution was adopted authorizing the sale of the lands in suit.

The Commissioners appeal from the adverse summary judgment.

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[1] The first patent was dated November 29, 1943, the second August 20, 1957 and the third December 5, 1961.

This court has the power to review a lower court's ruling on a pure question of law and to correct any misinterpretation or misapplication of the applicable legal norm. This error stands preserved and is properly before this court.[2]

The property in suit was acquired by the State through foreclosure proceedings and became a part of the corpus of the permanent school fund.[3] Art. 11 § 2, Okl. Const. The fund may be invested in first mortgages upon farmlands within the state. Art. 11 § 6, Okl. Const. The land came to be sold in accordance with the authority conferred by a 1937 statute.[4]

The validity of a sale of public land by the Commissioners is dependent upon the authority and power conferred by the legislature. The applicable statute, 64 O.S. 1941 § 82, must be examined and construed to determine the scope of the legislatively-conferred power. The statutory provisions empowering the Commissioners to issue patents become a part of the contract involved in the conveyance of the land. The rights of the parties thereto

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[2] 12 O.S. 1971 § 630; Southard v. Oil Equipment Corp., Okl., 296 P.2d 780, 782 [1956].

[3] Included in the permanent school fund are proceeds of the sale of public lands that have been or may be given by the United States government for the use and benefit of the common schools. Art. 11 § 2, Okl. Const.

[4] Okla.Sess.L. 1937, ch. 28, Art. 1 § 6 [later codified in 64 O.S. 1941 § 82].

must hence be determined in light of the statutory provisions.[5]

The provisions of 64 O.S. 1941 § 96 set forth the terms of sales contracts and certificates of purchase for the sale of State land such as the land involved in this case. This section provides in part, that "the Commissioners of the Land Office shall, in all cases, reserve and retain forever title to fifty (50%) per centum of all the oil, gas and other mineral rights in and under lands so sold". In State v. Phillips Petroleum Co., Okl., 258 P.2d 1193 [1953] we held that both this section and § 82(d)[6] are to be given effect, even though the sections are somewhat contradictory. In order to give effect to both of these sections, the requirement in § 96(c) of a fifty percent reservation should be controlling. This construction neither contradicts the provisions of § 82(d) nor does it fail to give necessary effect to the unmistakable intent expressed by the legislature in the language of § 96(c).

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[5] Hoover Equipment Co. v. Board of Tax Roll Corrections of Adair County, Okl., 436 P.2d 645, 649 [1967]; Baker v. Tulsa Bldg. & Loan Ass'n., 179 Okl. 432, 66 P.2d 45, 50 [1936].

[6] The terms of 64 O.S. 1941 § 82(d) provide in pertinent part: "The Commissioners of the Land Office shall reserve and retain forever the title to not less than forty [40%] per centum of all the oil, gas and other mineral rights in and under all lands to be sold; provided further, that the Commissioners of the Land Office are empowered to join in the execution of any oil, gas, or mineral lease on school lands, which have been sold and in which they have retained mineral interest, at their own

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The ascertainment of legislative intent is the cardinal rule of statutory construction.[7] That intent is determined from the whole act in light of its general purpose and object.[8] All of the statutory provisions dealing with the same general subject should be construed together and their provisions harmonized.[9] A statute should also be construed to render every word, sentence and provision operative, for it is presumed that every provision of a statute was intended to have some useful purpose and should be given effect.[10] The title to an act is a proper guide in ascertaining legislative intent.[11]

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discretion and without the necessity of advertising as required on State-owned lands. Such reservation is to be set out and included in all Certificates of Purchase and Patents issued to cover lands hereafter sold by the Commissioners of the Land Office."

[7] Riffe Petroleum Co. v. Great National Corp., Inc., Okl., 614 P.2d 576, 579 [1980]; Lekan v. P & L Fire Protection Co., Okl. 609 P.2d 1289, 1292 [1980]; Stemmons, Inc. v. Universal C.I.T. Credit Corp., Okl., 301 P.2d 212, 216 [1956].

[8] Midwest City v. Harris, Okl., 561 P.2d 1357, 1358 [1977]; Adams v. Fry, 204 Okl. 407, 230 P.2d 915, 917 [1951].

[9] Melton v. Quality Homes, Okl., 312 P.2d 476, 479 [1957]; Becknell v. State Industrial Court, Okl., 512 P.2d 1180, 1183 [1973].

[10] Matter of Ernest, James C., Okl., 578 P.2d 352, 355 [1978]; Street v. Bethany Firemen's Relief and Pension Fund Board, Okl., 555 P.2d 1295, 1298 [1976].

[11] Phillips v. Oklahoma Tax Commission, Okl., 577 P.2d 1278, 1282 [1978]; Perry v. City of Oklahoma City, Okl., 470 P.2d 974 [1970].

Section 82 is one in a cluster of statutes under Title 64 which deal with sales, leases and deficiency judgments relating to real property owned by the State and administered by the Commissioners.[12] These statutes must all be construed together in order to arrive at the legislative intent in any particular section. The Commissioners' authority *vis-a-vis* mineral rights in state lands is also dealt with in this chapter, although some of the statutes refer to these rights in different terms.

In § 92 the Commissioners are authorized to sell "oil, gas *or* other mineral leases" on state lands. This language suggests that the sale of mineral interests unrelated to oil and gas is covered by this statute. Reference is also made in § 82(d) to the execution of "oil, gas *or* mineral" leases by the State in the minerals reserved to it under this law. Another statute in this group, § 99, provides that the Commissioners shall reserve "all oil, gas and minerals". The title of the original Act, codified as § 99, provides that "all mineral rights [are] to be retained by the State". The title of the 1939 Act amending § 82 also provides in general terms that the amendments relate to the preservation of mineral rights. The titles to these acts and the references to mineral rights in general throughout this grouping of related statutes strongly indicate a legislative design to require the retention by the State of a percentage of *all* minerals.

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[12] See also 64 O.S. 1941 §§ 80-100.

A statute must also be construed so as to advance the beneficial purposes manifested by the legislature.[13] It seems clear that the reservation required by these statutes was designed to preserve in the State and its citizenry a valuable interest in the minerals underlying state-owned lands. This purpose is met by construing the reservation in § 82 to include all minerals.

The owner contends that the rule of *ejusdem generis* should be applied in construction of the phrase "oil, gas and other minerals". Under this well-known principle of statutory construction, when a general phrase follows a list of specific items, the general phrase is restricted by the nature of the specific items listed.[14] Applying this rule to the language of § 82(d), the owner argues, the use of words "oil and gas" before the general phrase "and other minerals" requires that the "other minerals" be limited only to those closely related to oil and gas, i.e. those which are constituents or components of oil and gas.

The *ejusdem generis* principle is one of many rules of statutory construction. It may not be applied automatically to every problem of statutory interpretation. Other rules of construction are equally potent. The doctrine of *ejusdem generis* yields to the rule that an act should be so construed as to carry out the object sought to be accomplished by it, so far as that object can be collected from the language of the statute. If the use of the rule *ejusdem*

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[13] McGannon v. State, 33 Okl. 145, 124 P. 1063, 1067 [1912].

[14] Cronkhite v. Falkenstein, Okl., 352 P.2d 396, 399 [1960].

generis would hinder or defeat the plain legislative purpose or intent, it may not be applied in statutory construction.[15] It is clearly apparent in the instant case that the application of this doctrine would defeat the intent expressed by the legislature in § 82(d) to retain for the State a percentage of *all* mineral rights. Insofar as the rule of *ejusdem generis* is held to be inapplicable here, our pronouncement rejecting that interpretative device is, of course, limited to conveyances by the Commissioners.

In construing the terms of §§ 82(d) and 96(c) in our prior case law, we have implicitly recognized that the reservation contemplated therein encompassed *all* minerals.[16] Although the issue of what minerals were included in the reservation was not specifically before us in those cases, it is clear that we viewed the plain and ordinary meaning of the statutory language to include not only oil-and-gas, its constituents and components, but *all other* minerals as well.

In the case at bar, the Commissioners were required to reserve fifty percent of all minerals. They were powerless to convey to the owner all of the coal rights in the

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[15] Couch v. State, 71 Okl.Cr. 223, 110 P.2d 613, 616 [1941]; Baccus v. Banks, 199 Okl. 647, 192 P.2d 683, 687, appeal dismissed 68 S.Ct. 743, 333 U.S. 858, 92 L.Ed. 1138, reh. den. 68 S.Ct. 911, 333 U.S. 883, 92 L.Ed. 1158 [1948].

[16] State v. Duggins, Okl., 258 P.2d 891 [1953]; Penner v. State, Okl., 302 P.2d 144 [1955]; State v. Phillips Petroleum Co., Okl., 258 P.2d 1193 [1953]; State v. Bright, Okl., 261 P.2d 875 [1953].

property in suit. Because the conveyance could not alienate more than the quantum authorized by statute, the owner's predecessors in interest acquired only fifty percent of the coal, the remaining interest having been retained by the State.

There also exists another ground for concluding that the Commissioners did not have the power to grant more than fifty percent of the coal rights. The provisions of § 82(a) require the Commissioners to adopt a resolution authorizing the sale of any land under this statute. The record in the instant case contains a certified copy of the minutes of the meeting of the Commissioners on September 11, 1938, at which a resolution was adopted approving the sale of the land involved in this case. The resolution stated that the State shall retain fifty percent of the mineral rights in and under lands sold. This resolution was voted upon and approved by the Commissioners. When the notice of sale was published, it included language different from that in the resolution. The phrase "all mineral rights" had been changed to "oil, gas and other mineral rights". The patents and certificates of sale contained language similar to that in the notice of sale. The Commissioners' official action and intent with respect to this property was clearly to retain fifty percent of all minerals. Their intent was not reflected with the same clarity in the notice of sale.

The notice of sale and patents cannot be allowed to control over the specific actions of the Commissioners. The Commission staff had no power to act in contravention of the clear intent of the Commissioners, as expressed by their resolution. One who purchases an interest in school lands, without making inquiry as to

compliance of the Commissioners with the terms of their trust, is charged with notice of such defects and irregularities as exist in the proceedings of the Commissioners and cannot claim the status of a bona fide purchaser.[17] The original purchasers of this land were deemed to have notice of the discrepancy between the official action by the Commissioners and the language of the reservation contained in the notice of sale and the patents. They hence cannot be said to have received more than fifty percent of the rights in all minerals, including coal. Subsequent purchasers are charged with notice of any defects or irregularities in proceedings before the Commissioners which are apparent upon examination of the records. The law draws here a close analogy to the principles applicable in guardianship sales.[18]

Summary judgment is reversed and cause remanded with directions to enter a judgment not inconsistent with this opinion.

After Irwin, C.J. and Williams, J. certified their disqualification, Barnes, V.C.J. assigned Hon. Joe Young and Hon. Alma Wilson, both judges of the district court, to sit as special justices in this case.

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[17] State v. Phillips Petroleum Co., supra note 16 at 1199; State v. Duggins, supra note 16 at 894; State v. Bright, supra note 16 at 877-878.

[18] State v. Phillips Petroleum Co., supra note 16 at 1199; Selement v. Gibson, 171 Okl. 513, 43 P.2d 759, 760-761 [1935]; Lowery v. Richards, 120 Okl. 261, 248 P. 622, 624-625 [1926]; In re Standwaitie's Estate, 73 Okl. 255, 175 P. 542, 543-544 [1918]; Burton v. Compton, 50 Okl. 365, 150 P. 1080, 1082 [1915].

BARNES, V.C.J., LAVENDER and HARGRAVE, J.J. and WILSON, S.J. concur. HODGES, SIMMS and DOOLIN, J.J. and YOUNG, S.J. dissent.

IN THE SUPREME COURT OF
THE STATE OF OKLAHOMA

Claude R. Butler, Appellee, v. The State of Oklahoma, ex rel. The Commissioners of the Land Office of Said State, Appellant.	FOR OFFICIAL PUBLICATION No. 51,609 (Filed Jan. 19, 1982)

HARGRAVE, J., Concurring Specially:

The majority finds, through statutory construction, a plain meaning for the phrase, "oil, gas and other minerals." Such a result affords the State, and only the State, protection from what amounts to a rule of property law, elevated from the humble origins of a simple rule of construction, i.e., *ejusdem generis*.

While the result reached by the majority is correct in determining the statutory intent requires reservation of a portion of all minerals, the majority ignores the broader implications of our past decisions which apply to all citizens of the state and were presented in this appeal. I would not salvage the State's interest here while relegating private parties to the unfortunate position of dealing with "oil, gas and other minerals" terminology solely

through the doctrine of *ejusdem generis*, without the aid of other methods of construction. Once a conveyance is determined to be ambiguous, the Court should allow the parties to utilize all traditional avenues of construction to resolve the ambiguity, rather than singling out *ejusdem generis* as the only available aid to resolution.

Answering plaintiff's second cause of action, the State alleged plaintiff was not entitled to a declaratory judgment determining the meaning of the words "oil, gas and other minerals" standing alone because the facts of this action demonstrate the existence of relevant admissible extrinsic evidence bearing upon the intent of the parties at the time of this transaction, including the statutory authority for the sale, and the notice issued pursuant thereto, as well as the balance of the language contained within the four corners of the patent.

Plaintiff thereafter filed a motion for judgment where facts are not controverted, including with the motion copies of the three patents, a notice of public sale, and a copy of Chapter 28, Article 1, Section 6 of the Oklahoma Session Laws of 1937.[1] His brief accompanying that

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[1] Section 6. Sale of Lands – Deficiency Judgments.

. . . .

(a) Upon resolution adopted by the Commissioners of the Land Office, any and all lands acquired by foreclosure of mortgage or the acceptance of deeds or lands heretofore sold under Certificate of Purchase Contract, where said Certificate of Purchase has been canceled, or all land acquired by original

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grant, except original grant land which can be used for grazing purposes only, may be sold by the Commissioners of the Land Office for cash or on Sales Contracts to be denominated, "Certificates of Purchase, providing for an initial payment of not less than ten (10%) per centum of the total purchase price, at the discretion of the Commissioners, the balance to be paid in not more than forty (40) equal annual payments with deferred payments drawing interest at the rate of three (3%) per cent per annum. Notice of the sale of such lands as may be offered for sale shall be published in five (5) consecutive issues in at least one weekly newspaper of general circulation in the county in which such tract or tracts of land are situated. Such notice shall give a brief description of the lands and improvements located thereon and the appraised value of both such lands and improvements, the time, place and terms of sale. Said lands shall be sold to the highest responsible bidder at public auction. No tract shall be sold for less than ninety (90%) per centum of the appraised value thereof, and the same shall be appraised prior to sale by three duly authorized appraisers of the Commissioners of the Land Office. In all cases the Commissioners of the Land Office shall have the right to reject any and all bids. Said Commissioners are hereby authorized to pay for the cost of conducting said sales from the proceeds thereof.

. . . .

(d) The Commissioners of the Land Office shall reserve and retain forever title to not less than forty (40%) per centum of all the oil, gas and other mineral rights in and under all lands to be sold. Provided further, that the Commissioners of the Land Office are empowered to join in the execution of any oil, gas or mineral lease on school lands, which have been sold and in which they have retained mineral interest, at their own discretion and without the necessity of advertising as required on State-owned lands. Such reservation is to be set out and included in all Certificates of Purchase and Patents issued to

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motion states the statutory authority for sale requires the State to reserve unto itself "40 per centum of the oil, gas and other mineral rights in and under all lands to be sold." Plaintiff states that this Court's interpretation of grants and reservations of oil, gas and other mineral rights has been that such a grant or reservation affects only oil, gas and other minerals produced as a component or constituent of that oil or gas. The position taken in plaintiff's trial brief is that this result is *dictated* by our prior application of *ejusdem generis* to the phrase "other minerals." Plaintiff also contended the use of the phrase "other minerals" is, in large part, a result of litigation concerning by-products of oil and gas as found at the wellhead. Among those distinct but integral substances are casinghead gas[2] and helium.[3] The State's response to

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cover lands hereafter sold by the Commissioners of the Land Office. Provided, that the provisions of this Section shall not apply to any State-owned lands which the Commissioners of the Land Office may, by resolution duly adopted, find to be suitably situated for townsite developmental purposes. Any such land may be by the Commissioners of the Land Office, platted and sold in separate town lots or in entire tracts at the discretion of the Commissioners, without reservation as to the mineral rights, and Patent conveying the full fee simple title may be given the purchaser upon full payment of the purchase price; provided that in the case of any lands being sold without the reservations of any mineral rights thereto, such sale shall be held only upon resolution adopted by a unanimous vote of the Commission.

. . . .

[2] *Withington v. Gypsy Oil Co.*, 68 Okla. 138, 172 P. 634 (1918).

[3] *Northern Nat. Gas Co. v. Grands*, 441 F.2d 704 (10 Cir. 1971).

the motion for summary judgment admitted all facts in the pleadings save the meaning of the phrase "oil, gas and other minerals." The State ex rel. Commissioners of the Land Office also alleged summary judgment was improper because that phrase last quoted as it appeared in the patent should be construed in the light of extrinsic evidence of the intent of the parties at the time of the transaction – the issuance of the patent.

The trial court sustained the motion for summary judgment on plaintiff's first cause of action; removing the cloud on plaintiff's title, but denied judgment on the second cause, which sought a declaratory judgment establishing the meaning of the phrase "oil, gas and other minerals." The trial authority's findings of fact echo the pleadings summarized above, there being no contest thereto. The conclusions of law made in the judgment dispose of the issues raised by the parties in the trial court. First, the judge concluded that there is no material distinction between the reservations contained in the notice of sale and the mineral deed subsequently issued. The notice stated the State would reserve an interest in "all the oil, gas and other mineral rights," while the patents reserved an interest in all the oil gas and other minerals and mineral rights. Furthermore, the court concluded that the statutory authority for the sale, the notice and the resultant patent were unambiguous and the intent of the parties was ascertained from the writings alone without resort to other extrinsic evidence of the parties' intent. The judgment holds the patents' reservation effects a reservation of only 50% of the oil, gas and other such minerals as are produced as a component or constituent of oil and gas from a drilled oil and gas well,

whether hydrocarbons or not, but does not operate to reserve to the state any other mineral or the right to produce the same, including coal. From the judgment and order, the State ex rel Commissioners of the Land Office perfected a timely appeal, designating all pleadings, orders and a "complete transcript of all proceedings" together with all evidence, stipulations and exhibits offered and introduced at pretrial and trial of the cause. Subsequently, the Commissioners of the Land Office struck from the designation the "transcript of proceedings."

The findings of fact recite that the notice given states in pertinent part:

> At such sale there shall be reserved and retained unto the State forever 50 per centum of all oil, gas and other mineral rights in and under all lands that may be sold. The purchaser shall receive an undivided fifty per centum of all the oil, gas and other mineral rights in and under all tracts hereby offered . . .

This notice was filed of record in Craig County affording constructive notice to all of the interest to be sold. In the past, we have held that the purchaser receives no title to minerals by reason of the issuance of a patent purporting to convey minerals when the notice of sale specifically excluded those rights under a previous codification of 64 O.S. 1971 § 95, *State ex rel Commissioners of Land Office v. Phillips Petroleum*, 258 P.2d 1193 (Okla. 1953); *State ex rel Commissioners of Land Office v. Bright*, 261 P.2d 875 (Okla. 1953), *Commissioners of Land Office v. Duggins*, 258 P.2d 891 (Okla. 1953). The principle is applicable here, and the notice of sale is the measure of the interest which was offered, bid upon and sold by the State.

The trial court's determination that the patent and notice were unambiguous and conveyed only the oil, gas and their constituents arises from this Court's discussion in *Allen v. Farmers Union Co-op Royalty*, 538 P.2d 204 (Okla. 1975). In *Allen*, the trial court had refused an offer to prove by extrinsic evidence the intent of the parties at the time of the transaction because it held the conveyance by Spears to Farmers was clear and unambiguous thereby limiting a determination of the parties' intent to the four corners of the instrument. This Court affirmed the trial court's refusal to admit extrinsic evidence of intent stating that "in view of our holding above, Spears had no interest in the metallic ores or minerals, and consequently could not convey an interest in those minerals to Farmers." After holding Spears had no interest to convey, the Court added the surplus observation that:

> . . . Furthermore, we held in the Panhandle case supra (495 P.2d 108, 111 and 113) that a deed granting the same mineral interest ("oil, gas and other minerals) *with other subsequent provisions almost identical to that in the present deed* . . .

The emphasized portion of the preceding quote is the sole acknowledgment in *Allen* of the correct reading of *Panhandle* and it is dicta in an alternative ruling. In *Allen*, the initial determination that Spears had no interest to convey to Farmers resulted from the determination that Spears' conveyance to the bank reserving "one half interest in and to all oil, gas and mineral rights" reserved only oil and gas and other components of the *ferae naturae* as it arrives at the mouth of the well. *Allen's* discussion of the reservation and the law applicable is quoted fully in

pertinent part in the margin.[4] Consideration of that marginal note discloses that in *Allen* the Court found Spears' reservation was ambiguous. This is so because the Court applied the doctrine of *ejusdem generis* to arrive at the meaning of the reservation. Where a deed or contract is reduced to writing, the intent of the parties is to be ascertained from the writing alone. *Bryan v. Everett*, 365

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[4] . . . The problem is to determine the meaning therof when used in the phrase "all oil, gas & mineral rights." We conclude that the solution to this problem is to be found in the same manner as was used in determining the meaning of "all oil, gas and other minerals." In the latter situation we used the rule of ejusdem generis. In Cronkhite v. Falkenstein, Okla., 352 P.2d 396, 399, we quoted the rule as follows:

"Under the rule of ejusdem generis, where a party or author in a contract or conveyance makes use first of terms each evidently confined and limited to a particular class or species of things, and then, after such specific enumeration, subjoins a term of very extensive signification, this term, however general and comprehensive in its possible import, yet, when thus used, embraces things only ejusdem generis, i.e., of the same kind or species, with those comprehended by the preceding limited and confined terms."

[1] It is our opinion that the Spears' reservation, "all oil, gas & mineral rights" has essentially the same meaning as "all oil, gas and other minerals" as set forth in the Panhandle case (495 P.2d 108, 113) i.e., oil, gas and other minerals produced as a component or constituent thereof, whether hydrocarbon or nonhydrocarbon, and does not convey any other mineral or the right to produce any other mineral including copper, silver, gold or any other types of metallic ores or metallic minerals.

Under this definition of the Spears' reservation, Baines-Bowman have no interest in the metallic ores or minerals.

P.2d 146, (Okla. 1961), 15 O.S. 1971 §154,155. The paramount consideration of the Court is to determine the intent of the parties at the time of contracting. 15 O.S. 1971 § 152. *Public Service Co. of Okla. v. Home Builders Ass'n of Realtors, Inc.*, 554 P.2d 1181, (Okla. 1976). At the outset, that consideration is limited to the four corners of the written agreement. 12 O.S. 1971 § 154. Rules of construction and interpretation of contracts are available to remove uncertainty WHEN AN AMBIGUITY EXISTS, but if the language used by the parties is clear and explicit then that language governs the determination of the intent of the parties in the absence of fraud, accident, mistake or absurdity. *Frensley v. White*, 208 Okla. 209, 254 P.2d 982 (1953); *Van Zant v. State Ins. Fund*, 203 Okla. 421, 223 P.2d 111 (1950); *Continental Casualty v. Wear*, 185 Okla. 245, 91 P.2d 91 (1939). Conversely, if the language used shows the intent of the parties, there is no need to apply rules of construction, for where there is no doubt, there is no room for construction. *Romans v. Shannon*, 80 Okla. 199, 195 P. 298 (1921); *Strange v. Hicks*, 78 Okla. 1, 188 P. 347 (1920). The doctrine of *ejusdem generis* is a rule of construction and not a rule of property law, as was noted in *Panhandle, supra*. Therefore, it is certain the implication from the application of the doctrine to the reservation made by Spears in *Allen, Supra*, is that such reservation was ambiguous. Counsel attempted to introduce evidence extrinsic to the document of the parties' intent. The trial court refused that offer as was noted in *Allen, supra*, in the first new paragraph on page 207, now quoted:

> At the trial of the cause the above instruments were introduced in evidence. The trial court also permitted Flag, as an offer of proof, to introduce testimony and evidence designed to show that, at the

> time Spears conveyed the mineral interest to Farmers and during their later relationship and dealings concerning the same, Spears and Farmers thought and believed they owned a mineral interest consisting of more than an interest in the oil, gas and constituents thereof. *This evidence was offered,* as we understand it, *to show the intentions of the parties* in connection *with the reservation* and conveyances. The court permitted this evidence only as an offer of proof, refused to consider it, held the instruments were clear and unambiguous, and rendered judgment against the Appellants quieting title in the Allen Heirs to all the metallic minerals specifically and generally described above. (E.A.)

As noted in *Rush v. Champlin Refining Company,* 321 P.2d 697, (Okla. 1958), at pp. 700, 701, unless a deed is ambiguous it is the duty of the court to interpret it, and parol evidence is not competent to explain it or vary its terms. However, when a deed possesses an element of ambiguity or uncertainty, parol evidence, the admissions of the parties, and other extraneous circumstances may be proved to ascertain the true intent of the parties when the ambiguity is intrinsic and is shown on the face of the instrument. *Allen,* therefore, is internally inconsistent. The language of the *Spears'* reservation was ambiguous enough to require interpretation by the application of the rule of construction known as *ejusdem generis* to establish the reservation reserved only the oil and gas to the grantor. Despite that fact, the trial court's refusal to admit parol evidence relating to the intent of the parties was affirmed. It is my view that where a grant or reservation is ambiguous enough to require the application of such an arbitrary rule of construction, the parties should be allowed to introduce parol evidence to explain their intent at the time of the transaction. Title 15, O.S. 1971

§§ 152, 153, 154 and 155, all refer to determining the intent of the parties to the transaction. We have said the chief object to be furthered in the interpretation of a contract is to ascertain the intent of the parties. *McDowell v. Droz*, 179 Okla. 199, 64 P.2d 1210 (1937). The Tenth Circuit Court of Appeals has paraphrased that statement, saying that under Oklahoma law the paramount object of construing a contract is ascertaining the intent of the parties if it can be done consistent with legal principles. *Kelso v. Kelso*, 225 F.2d 918, 10 CCA, (Okla. 1955). It is therefore my opinion that at any time a *deed* is held to be ambiguous enough to require the application of the rule of *ejusdem generis*, the Court should also entertain parol evidence as to the intent of the parties, if an offer thereof is made. To do otherwise would in effect apply an arbitrary legal principle to create certainty where it does not exist within the four corners of the document, and at the same time refuse parol evidence of high probative value establishing the parties' intent. Such a result is contrary to the clear mandate of the legislative enactments of Title 15 cited above. The Court should not strain to find a clear meaning in an ambiguous document, and having done so thereby exclude extrinsic evidence on the ground that no ambiguity exists. In re Tucker's Estate, 279 P.2d 760, (Cal. 1955).

Insofar as *Allen, supra*, can be read to establish a definite meaning to the phrase "oil, gas and other minerals," and similar phrases, through the use of the doctrine of *ejusdem generis* without allowing the parties to elicit evidence as to the actual intent, I would disapprove of that ruling. Once a conveyance is determined to be ambiguous rules of construction and interpretation are to

be used in conjunction with extrinsic evidence of the intent of the parties. *Allen* is the only instance this Court has found which requires disapproval for the above reason. All past decisions of this Court are solidly based on the premise that the doctrine of *ejusdem generis* is a rule of construction – not a rule of property law, and is to be used to resolve an ambiguity in the conveyance in conjunction with other methods of determining the intent of the parties.

Panhandle Cooperative Royalty Co. v. Cunninghan, 495 P.2d 108, (1972) aptly illustrates the fact that the doctrine of *ejusdem generis* is nothing more than a rule of construction. Moreover, *Panhandle* flatly so states at p. 114, although the preceding page states:

> It is indeed apparent from a consideration of the cases we have just cited that in contracts dealing with the production of oil and gas, the expression "and other minerals" has a special purpose in extending the connotation of "oil and gas" only.

It must be noted that the quotation refers, not to mineral deeds, but to "contracts dealing with the production of oil and gas." The cases cited before the quotation were all oil and gas leases, and the character of an oil and gas lease leaves but small chance that an ambiguity as to the subject of the instrument's conveyance will arise. Oil and gas leases commonly speak of burying pipelines below plow depth; provide for royalty in terms of percentages of gross product at the mouth of the wellhead; and frequently vary the royalties to be paid according to whether or not gas or oil is produced. These examples suffice, for all practitioners are aware of the myriad of provisions currently in use in the oil and gas leasing industry. Looking at the four corners of such a lease it

would be unusual that doubt would arise as to what mineral was leased. The situation differs when we look at the typical mineral deed which is more apt to be a short document simply conveying or reserving all oil, gas and other minerals free of the customary baggage that accompanies a lease. *Panhandle* does clearly demonstrate that the rule of *ejusdem generis* is a rule of construction to be used in determining the parties' intent. Two quotations from pages 114 and 155, read together, demonstrate that fact:

> Concluding that this intention of the parties as revealed within the four corners of the Farmers-Flag deed is clear, we did not use "ejusdem generis" in our interpretation of this deed.
>
> . . . .
>
> We agree that the Panhandle deeds are ambiguous and that parol evidence is permissible to clarify the ambiguity. Briggs V. Waggoner, Okla., 375 P.2d 896 (1962). In light of the rule announced in Hill v. Anderson et al., Okla., 363 P.2d 849 (1961) the pleadings are adequate to require the trial court to hear and consider evidence that bears on the intention of the parties concerning the scope of the grant.

Panhandle is a correct exposition of the law as announced in previous decisions of this Court from the early case of *Wolf v. Blackwell Oil & Gas*, 77 Okla. 81, 186 P. 484 (1920). Therein the discussed portion of the conveyance discloses it is ambiguous. *Cronkhite v. Falkenstein*, 352 P.2d 396 (Okla. 1960), expressly recognizes the principle reiterated here, and that is that the rule of *ejusdem generis* is simply a rule of construction to be utilized when the four corners of the document does not disclose the intent of the parties. At p. 399, Justice Jackson stated:

> We agree that the rule of adjusdem generis (sic) is not properly applicable where the result would be

> contrary to the plain and clear intention of the parties. However, after carefully reviewing the *extrinsic evidence*, including the preliminary negotiations, the relationship of the parties, the purpose of the transaction, and other relevent matters, we are of the opinion that the judgment of the trial court was not clearly against the weight of the evidence. . . .

The balance of the instances where this Court has applied the aforementioned rule disclose that the instrument examined was ambiguous and that extrinsic evidence as well as the rule of construction considered here were used in determining the intent of the parties. Although certain of the cases do not expressly hold the documents to be ambiguous, the context of the opinions demonstrate that fact.

Other than *Allen, supra*, the case of *Sloan v. Peabody Coal Co.*, 547 F.2d 115 (CA10 1977), is noted as contra to the views expressed herein. In that action, the Federal 10th Circuit Court of Appeals expressly noted that there was no direct Oklahoma authority on the point at issue and held that the statement "oil, gas and other minerals" was to be construed in light of the doctrine of *ejusdem generis*, not to convey or reserve coal. I do not find that statement to be a correct exposition of the law in this jurisdiction, although the case is procedurally correct in that the opinion notes that the parties stipulated the issue was solely a matter of law. Thus, the intent of the parties as disclosed by extrinsic evidence was not an issue, and the court was left with the application of *ejusdem generis* without other evidence of the parties' intent in a summary judgment proceeding. The opinion additionally notes the trial court correctly refused to admit extrinsic evidence despite the fact that the opinion also notes that at trial, the parties agreed the issue was one of law.

Whenever a conveyance of an interest in land is so ambiguous that the intent is not so clearly expressed that the rule of construction denominated *ejusdem generis* is utilized, the trial court should be able to entertain evidence outside the four corners of the instrument in determining the intent of the parties.

I am authorized to state that LAVENDER, J., concurs in the view expressed herein.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

CLAUDE R. BUTLER,
Appellee,

vs.

THE STATE OF OKLAHOMA ex rel., THE COMMISSIONERS OF THE LAND OFFICE OF SAID STATE,
Appellant.

No. 51,609
(Filed Jan. 19, 1982)

DISSENTING OPINION

SIMMS, J:

I must respectfully dissent.

The majority holds that the reservation "oil, gas and other mineral rights" includes coal and all other unknown and unspecified minerals because the Commissioners of the Land Office were "powerless" to convey

them away. The majority bases this lack of power on three points:

> (1) The presence of the phrase "oil, gas and other mineral rights" in § 82(d) shows the intent of the legislature that in such sales the commissioners should reserve for the state 50% of all minerals, not just oil and gas and the components and constituents thereof, and the Commissioners therefore could not effect a lessor reservation;
>
> (2) The words of reservation reflected in the minutes taken when the Commissioners decided (resolved) to sell the land – fifty per cent of "the minerals" – are substantially different from, and prevail over, the words of the patent as well as the certificate of purchase and notice of sale, because the resolution is the "official action" of the Commissioners;
>
> (3) Purchasers take with notice of a discrepancy in language between minutes of a resolution to sell land and the language used in the ensuing notice of sale, certificate of purchase and patent. Additionally those, such as Mr. Butler, who subsequently purchase from them also take with notice of the minutes.
>
> I find none of these grounds valid.

As to the "minutes of resolution", it should go without saying that by arguing the position at all, the majority concedes the point that a reservation of "oil, gas and other mineral rights" set out in a patent, certificate of purchase and notice of sale does not retain minerals other than oil and gas.

Next, even assuming, which I don't, that in Oklahoma "the minerals" has a meaning different from "oil, gas and other mineral rights" (and "oil and gas")[1], there

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[1] See, e.g., *State v. Phillips, Okl., 258 P.2d 1193 (1953).*

is no basis for holding these minutes of the resolution control over the patent. It is not surprising that the majority cites no support for doing so.

It is fundamental that a patent is solemn evidence of title; it is a written public grant of the highest character and high evidence of its own validity. Where government officers have issued a patent in due form of law, which on its face is sufficient to convey title to land described, it is to be treated as valid in actions of law. The recitals of the patent are conclusive as to the estate conveyed and no evidence can be received for construction thereof. A patent is deemed to have been issued regularly and the presumption exists that all usual necessary steps were taken before the title was perfected by the patent.[2]

Looking behind this patent to give any import to the minutes of the meeting is unsupported in law and portends great mischief.

The majority's suggestion that somehow the "staff" acted contrary to law or the intent of the commissioners is unfounded. The notice, certificate of purchase and patent were the specific and official acts of the Commissioners. The entire sale process was regular (64 O.S.1941, § § 95,96), and the patents duly executed by the proper officers of the Commission. In fact, the words of the patents follow the statute, § 82(d).

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[2] See e.g., *Sharp v. City of Guthrie, 49 Okl. 213, 152 P. 403 (1915); Bagness v. Broderick, 38 U.S. 436, 13 Pet. 436, 10 L.Ed 235 (1839); Colorado Coal & Iron Co. v. United States, 123 U.S. 307, 85 S.Ct. 131, 31 Lawyer's Ed.* 182 (1887). CSEE, 1 O.S. 1971, § 11.

I do not agree that words of minutes, even if dissimilar in effect, constitute the type of a defect or irregularity which could have charged the original purchaser with notice.

The decisions cited in support of that notion by the majority are inapposite.[3] Even if the majority were correct as to the original purchaser, Mr. Butler would be an innocent purchaser who took without notice.[4]

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[3] *State v. Phillips, Okl., 258 P.2d 1193 (1953); State v. Bright, Okl., 261 P.2d 875 (1953); and State v. Duggins, 258 P.2d 891 (1953),* involve situations where the published offering of sale - the notice of sale – expressly stated the purchaser would receive no mineral interest, but the certificate of purchase was issued on a standard printed form not conforming to the terms of the sale as shown in the notice; reading instead "purchaser will receive an undivided fifty per centum of all oil, gas and other mineral rights in and under" the land. The point of those decisions was that there was no dispute as to the terms of the offer of sale and the purchaser knew or should have known, the terms of the sale as published in the notice.

[4] *See, e.g., Lynch v. United States, 13 Okl. 142, 73 P. 1095 (1903); Colorado Coal & Iron Co. v. United States, supra, note 2.*

The majority's additional reliance on *State v. Phillips, supra,* as supporting the notion that Mr. Butler would take with notice and could not claim to be bona fide purchaser is in error. In *Phillips,* the holding of the Court as to the lack of availability of the defense of bona fide purchaser for Phillips, the holder of an oil and gas lease, was based on the fact that its assignor held only bare equitable title at the time of the assignment. Additionally, Phillips' assignor had not received the required approval of the Commissioners before the transfer under the Certificate of Purchase. Mr. Butler and his predecessors in title, however, held full legal title – the patent.

As to the statutory provisions relied on by the majority to support its conclusion that the Commissioners were "powerless" to convey away unknown coal and all other unknown and unspecified minerals in addition to oil and gas – it is my belief that the majority, in picking a few words from a few statutes, has reached a sweeping conclusion which is in total contradiction to the whole of the law on the subject and its history. I will attempt to limit this discussion to only the most essential points.

First, there is a very simple reason that 64 O.S.1941, § 82(d) pertaining to the percentage reservation of interest on land sold after foreclosure of mortgages contains the phrase "oil, gas and other mineral rights in and under" the land. The statute was enacted in 1935 as part of an entire Act "prescribing rules and regulations for the Commissioners of the Land Office", Laws 1935, ch.28, Art. 3, §§ 1-35, § 19(d). Originally, 50% was the required reservation. As part of that same Act, the Legislature provided that with certain exceptions, an applicant for a first mortgage on improved farm lands must have owned the fee simple record title for one year and that "(i) . . . no loan shall be made on any lands where more than one half of the oil, gas *or* mineral rights therein or thereunder are not owned by the applicant."[5]

As to the meaning of "oil, gas or (and) other mineral rights" in the provisions, the majority is clearly wrong. The requirement means ownership of the oil and gas and

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[5] That requirement was changed to 1/4 in 1957 (Laws 1957, p. 479) and has since been abolished. Compare 64 O.S.1971, § 52, and 64 O.S.Supp. 1981, § 52.

constituents and components thereof.[6] It does not mean oil, gas, coal and all other assorted minerals which might be present and discovered in the future.[7]

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[6] The requirement may even have been satisfied by the loan applicant's ownership of other interest, such as royalty. This royalty issue generally has itself been a fertile field of litigation. See for example: *Simpson v. Burris, Okl., 365 P.2d 134 (1961); Swearingen v. Oldham, Okl., 159 P.2d 247 (1945),* and cases cited therein.

[7] It is true that in prior cases construing §§ 82(d) and 96(c) the precise issue of what minerals were included in the reservation was not before us. It is not true, however, that the Court ever viewed the reservation as including anything but oil and gas and its components and constituents.

In *State v. Phillips, supra, note 3,* for example, the Court began its analysis with the Enabling Act, noted the Constitutional provision creating the Commissioners, set forth the provisions discussed here by the majority – §§ 96(c), 82(d), and 92, as well as §§ 281 and 282, and set forth the following conclusion in its syllabus:

> "2. Section 32, Art. VI, of the Oklahoma Constitution, creates the Commissioners of the Land Office and grants to them full power over the sale, rental, disposal, and management of school lands of the State, under rules and regulations prescribed by the Legislature. When all acts of the Legislature affecting the disposition or reservation of mineral interests in land sold are considered together, they vest in the Commissioners of the Land Office authority to retain and reserve for the State all minerals underlying land found or deemed by the Commissioners to be valuable for oil and gas. Otherwise, the per cent of the mineral rights reserved rests in the sound discretion of the Commissioners of the Land Office."

(Continued on following page)

Section 82(d) does not create, and does not purport to create, some new power on the part of the Commissioners to protect and reserve interests in oil and gas. Those powers have always been present under the chapter entitled "Segregation and Lease of Oil and Gas Lands", §§ 281, et seq. § 82(d) merely extended that existing power to additional lands – those acquired by foreclosure. The reservation of § 82(d) (and § 96) is entirely consistent with the constitutional and statutory scheme pertaining to oil and gas on public lands.[8]

In holding that § 82 applies to unknown coal deposits and all other undiscovered minerals, however, the majority has overlooked another entire chapter of Title 64 which has also existed since Statehood, enacted as part of the original public lands provision, and historically entitled "Segregation and Lease of Mineral Lands.[9] This is

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(Continued from previous page)

This exact language was again used by the Court in *State v. Bright, supra, note 3.*

Inasmuch as the majority has linited its consideration to the power of the Commissioners and avoided general discussion of the meaning of "oil, gas and other mineral rights" in a grant or reservation by one other than the Commissioners, I shall do the same. But, see, e.g., *Allen v. Farmers Union Co-Operative Royalty Co., Okl., 538 P.2d 204 (1975); Panhandle Co-Operative Royalty Co. v. Cunningham, Okl., 495 P.2d 108 (1972); and see, Hinkle v. Gauntt, Okl., 206 P.2d 1001 (1949)*

[8] Our interpretation of same, set forth in *Phillips, supra,* and *Bright, supra,* is found in note 7.

[9] Repealed in 1955, (Laws 1955, p.373), now 64 O.S.1971, §§ 451, et seq., entitled "Mineral Leases and Prospecting Permits."

the separate and independent counterpart of the oil and gas lands chapter. It is from this chapter that the Commissioners' power to protect and reserve interests in minerals other than oil and gas arises. The majority's holding that the Commissioners were required to retain interests in unknown and unspecified minerals – based on the unstated assumption that they had the power to do so – is at absolute odds with the statutes. That is, in fact, the very thing they were truly "powerless" to do.

Chapter 69, R.L.1910,[10] authorized the Commissioners generally to sell and lease land subject to certain procedures. It specifically authorized them to segregate lands valuable for oil and gas and also to segregate other mineral lands.

The first sections of these chapters provided:

> "7195. *Commissioners to segregate public land containing oil and gas.* When any tract of the school or other public lands, granted to the State of Oklahoma under the act of congress known as the 'Enabling Act' is known by the commissioners of the land office of the State to contain oil or gas, or where such lands are, by said commissioners, deemed valuable for oil and gas purposes, such commissioners shall enter of record in their office their finding, declaring that such oil or gas character exists, and further declaring that the oil and gas deposits are segregated from the surface use and interest therein, and such segragation of such deposits shall conclusively withhold the same from sale, lease or other alienation, except as provided in this article.

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[10] The historical background of these statutes is revealed by the Enabling Act, sections 7-10, art. 11, §§ 1-6 and art. 6, § 32 of the Oklahoma Constitution.

7204. *Segregation of mineral deposits.* When any tract of land belonging to the State is known by the commissioners of the land office to be mineral in character, the commissioners of the land office shall enter of record, in their office, their findings, declaring that such mineral character does exist, and further declaring the minerals thereof segregated from the surface uses and interests therein; and all such mineral interests shall be reserved from sale until the year 1915, and for such additional period of time as may be determined by law."

The entire mineral lands chapter is set out in Appendix 1.

A comparison of the two chapters shows obvious differences in import and specificity. These differences are undoubtedly a result of the unparalleled importance of oil and gas production in the history of this state. As minerals other than oil and gas have been comparatively less important until very recently, they have received relatively little attention generally in our history and law. In keeping with this general lack of interest, the "mineral lands" statutes have been largely ignored. Not one case has been litigated in this Court under them, and the only explicit mention of their existence which I found is in *Magnolia Petroleum Co. v. Price, 86 Okl. 105, 206 P. 1033 (1922).*

We have, for example, a constitutional provision concerning the proceeds of oil and gas leases, royalties, rentals, etc., on our public lands which does not even mention leases for other minerals. Section 32, Art. 10, adopted April 5, 1955, provides:

"* * * any royalties, bonuses, rentals, or other monies derived from oil and gas leases on lands that have been or may be granted by the United States to the

> State for the use and benefit of the common schools, or lands tha are or may be held by the Commissioners of the Land Office for the use and benefit of the common schools, the proceeds of the sale of easements, improvements and sand and gravel on any such lands, the proceeds of all property that shall fall to the State by escheat, penalties for unlawful holding of real estate by corporations, and capital gains on assets of the permanent school fund; * * *"

shall be deposited in the "State Public Common School Building Equalization Fund"[11] and that said fund "shall be used to aid school districts in acquiring buildings.

Mineral interests on segregated land *known* to be mineral in character were reserved from sale only until 1915, and any additional period required by law. The law never required an additional period. In fact, in 1933, the legislature repealed § 7204 but left the other provisions intact (including § 7206 which directed the Commissioners to segregate mining claims in the manner provided by the repealed section.)

I'm happy to say that it is not my purpose here to interpret the provisions of our mineral land statutes for the first time. Many obvious questions are presented but none of them need be addressed in this case. It is clear, however, that if it is assumed that the Commissioners had a duty to segregate known mineral lands after 1915, then the 1933 repeal of § 7204 had one of two effects. Either it did not change anything and the Commissioners

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[11] But see, *State ex rel., Williamson v. Commissioners of the land Office, Okl.*, 301 P.2d 655 (1956) as to proper fund for disposition of proceeds.

still had a duty to segregate lands known to be mineral in character or the repeal relieved them of that duty.

In either case, whatever their duties were, or should have been, toward known mineral lands in 1941, the date in question, the Commissioners were not "powerless" to convey away rights to coal or any other mineral not known to be present on the land at the time of sale. The effect of the interpretation of § 82(d) to the opposite result is in direct conflict with our statutes and the settled mineral land law.

The key to mineral lands provisions lies in the knowledge of the existence of specific minerals in sufficiently valuable quantities. It was never the purpose of the Commissioners to offer land for sale and yet retain rights to unknown minerals which might in the future be found to exist.

As stated, we have no decisions on point. There have been decisions precisely in point by the United States Supreme Court, however.[12]

In *Deffeback v. Hawke, 115 U.S. 392, 6 S.Ct. 95, 29 L.Ed 423 (1885)* the Court determined that where land was known to be mineral in character (gold, silver, cinnabar or copper), title must be acquired under the mineral land provisions, not under townsite or homestead, or pre-

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[12] There are some obvious differences between our mineral land laws and those of the United States. Those differences make the substance of the Supreme Court holdings even stronger here, however, for under our statutes the burden of knowledge rests on the Commissioners at a voluntary sale rather than the purchaser in an ex parte proceeding.

emption laws. The Court reviewed the mineral land legislation at some length and declared the essential elements to be as follows:

> "We say 'land *known* at the time to be *valuable* for its minerals,'as there are vast tracts of public land in which minerals of different kinds are found, but not in such quantity as to justify expenditures in the effort to extract them. It is not to such lands that the term 'mineral,' in the sense of the statute, is applicable. * * * We also say lands *known* at the time of their sale to be thus valuable, in order to avoid any possible conclusion aginst the validity of titles which may be issued for other kinds of land, in which years afterwards rich deposits of mineral may be discovered. It is quite possible that lands settled upon as suitable only for agricultural purposes, entered by the settler and patented by the government under the pre-emption laws, may be found years after the patent has been issued to contain valuable minerals. Indeed, this has often happened. We therefore use the term '*Known* to be valuable at the time of sale,' to prevent any doubt being cast upon titles to lands afterwards found to be different in their mineral character from what was supposed when the entry of them was made and the patent issued."
> U.S., at 404.

In *Davis v. Wiebold, 139 U.S. 507, 11 S.Ct. 628, 35 L.Ed 238 (1891)*, the Court held that where entry of a town site was had, sale made and patent issued, a subsequent discovery of minerals could not deprive the purchaser of the premises.

Considering the question and the controlling statutes, the Court stated:

> "It is true the language of the Revised Statutes touching the acquisition of title to mineral lands withing the limits of town sites is very broad. The declaration

that 'no title shall be acquired' under the provisions relating to such town sites, and the sale of lands therein 'to any mine of gold, silver, cinnabar or copper; or to any valid mining claim or possession held under existing laws,' --would seem on first impression to constitute a reservation of such mines in the land sold, and of mining claims on them, to the United States; but such is not the necessary meaning of the terms used; in strictness they import only that the provisions by which the title to the land in such town sites is transferred shall not be the means of passing a title also to mines of gold, silver, cinnabar or copper in the land, or to valid mining claims or possessions theron. They are to be read in connection with the clause protecting existing rights to mineral veins; and with the qualification uniformly accompanying exceptions in Acts of Congress of mineral lands from grant or sale. Thus read they must be held, we think, merely to prohibit the passage of title under the provisions of the Town-Site Laws to mines of gold, silver, cinnabar or copper, which are known to exist, on the issue of the town-site patent, and to mining claims and mining possessions, in respect to which such proceedings have been taken under the law or the custom of miners, as to render them valid, creating a property right in the holder, and not to prohibit the acquisition for all time of mines which then lay buried unknown in the depth of the earth. The exceptions of mineral lands from pre-emption and settlement and from grants to States for universities and schools, for the construction of public buildings and in aid of railroads and other works of internal improvement, are not held to exclude all lands in which minerals may be found, but only those where the mineral is in sufficient quantity to add to their richness and to justify expenditure for its extraction, and known to be so at the date of the grant. There are vast tracts of country in the mining States which contain precious metals in small quantities, but not to a sufficient extent to justify the expense of their exploitation. It is not to such lands

that the term 'mineral' in the sense of this Statute is applicable."

The Court noted the uniformity of the decisions of state and federal courts on the subject and rulings by the Land Department and set for the the following from *Cowell v. Lammers, 10 Sawy. 246, 247,* which is particularly relevant in the action before us as it concerned the meaning of mineral lands in a patent which "excepted and excluded all mineral lands, should any be found to exist":

"The Land Department in this very case, as in cases of patents to pre-emptioners, homestead claimants and other purchasers of the public lands, have acted, and I think correctly, upon the idea that patents to lands, not known to be mineral lands at the time the patent issued, carry the title to all mines subsequently discovered in the lands, notwithstanding the reservation from sale of mineral lands in the Acts of Congress. By the words 'mineral lands' must be understood lands known to be such, or which there is satisfactory reason to believe are such, at the time of the grant or patent. And the United States courts, which have had occasion to act upon this subject, so far as I am aware, have adopted that idea. * * * There must be some point of time when the character of the land must be finally determined, and, for the interest of all concerned, there can be no better point to determine this question than at the time of issuing the patent. The supreme court has not yet had occasion to decide the point as to the effect on a patent of a discovery of a valuable mine in lands subsequently to the issue of a patent. Any other construction would be disastrous in the extreme to the holders of lands in California under United States patents. If land, which a party has actually occupied, possessed and peaceably enjoyed for a long series of years, claiming title under a patent of the United States fifteen years old, can be entered upon and prospected for a mine by any trespasser who chooses to

> do so, and a mine being found, the mine can be located, and taken out of the patent on the vague and uncertain exception in the patent in question, it can be done fifty or a hundred years hence, and the patent, instead of being a muniment of title upon which the patentee or his grantees can rest in security, would be but a delusion and a snare." 139 U.S., at 520, 521.

See, also, *Colorado Coal & Iron v. United States, supra, note* 2.

We recognized long ago that the Commissioners have the "power" to convey away legal title to lands which they knew to be valuable for oil and gas and we recognize the effect of such a conveyance: title passes.

In *Magnolia Petroleum v. Price, 86 Okl. 105, 206 P. 1033 (1922), aff'd 267 U.S. 415, 45 S.Ct. 312, 69 L.Ed 689,* we stated:

> "The Commissioners of the Land Office could not have acted in good faith to the trust imposed in them by the Constitution and by the statute if they had advertised this land, believing that it contained oil and gas products which would pay a hundredfold more to the state than the sale of the land would pay; but, as a matter of course and as a matter of law, had the state sold and conveyed such land to the lessee, then the lessee would have had the right to the oil and gas therein, but the state has not sold it and the lessee has not purchased it, and until the land is sold and purchased by the lessee and fee-simple title conveyed to the lessee, such lessee has no right to the oil and gas or other minerals therein.
>
> * * *

> Nor is it necessary to decide that if the lands had been sold and conveyed to Price by the Commissioners of the Land Office, knowing that it was swimming in rich pools of oil and gas, whether they could have been criminally prosecuted for making such sale, knowing such state of facts. The fact is that they were apprised of the oil values of the land, and in consonance with the trust reposed in them, they acted for the better interest of the state."

The reservation here includes only oil and gas and the components and constituents therof. Only those interests expressly reserved do not pass with the fee. 16 O.S.1971, §§ 19,29.[13] The majority's holding today places every land title in jeopardy by allowing minutes of a meeting to control over a patent. By allowing the Commissioners to claim rights to coal and all other minerals unknown at the time of sale, the majority has opened never ending areas of litigation and created problems of unimaginable magnitude. While minerals other than oil and gas may have been relatively unimportant in Oklahoma in the past, they are not now.

This is one of at least two actions now before us arising from the Commissioners' recent attempts to claim coal on land sold many years ago. In *State, ex rel., Commissioners of the Land Office v. Barnett, No. 52,252,* the Commissioners were unsuccessful at trial and before the Court of Appeals (unpublished opinion, Oct. 30, 1979). That action is now pending before us on certiorari.

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[13] See: *Cutright v. Richey, 208 Okl. 413, 257 P.2d 286 (1953); Rose v. Cook, 207 Okl. 582, 250 P.2d 848 (1952). See, also: Tansel v. Storm, 40 Okl. 363, 138 P. 168 (1913); Wise v. Tabor, 201 Okl. 428, 206 P.2d 970 (1979).*

Given the economic realities of today's world and our energy problems, we can now expect more and more litigation over coal and all other minerals. With every new discovery of any mineral or technological advance in recovery techniques, the Commissioners may now reclaim what they once voluntarily sold for valuable consideration.

It may be that the time has come for the Legislature to provide for the reservation of minerals other than oil and gas on public lands sold by the Commissioners. But it is not our proper function to create that power retroactively.

According to the briefs filed with this Court by the Commissioners in the *Barnett* appeal, the Commissioners have–by their own count–executed 11,000 patents containing this same reservation and those 11,000 patents affect between 1.5 and 2.5 million acres.

It should be of interest to this Court, and it certainly will be of interest to the many thousands of land owners whose chain of title includes a patent similar to this one, that the standard coal lease form prepared by the Commission after they passed rules for leasing coal in 1978, specifically allows strip mining.

That may be the first issue we are asked to resolve as a result of today's decision, but it certainly won't be the last.

I am authorized to state that Hodges, J., and Joe Young, S.J., concur with the views expressed in this dissenting opinion.

APPENDIX C

IN THE DISTRICT COURT
WITHIN AND FOR CRAIG COUNTY
STATE OF OKLAHOMA

CLAUDE R. BUTLER, Plaintiff, vs. STATE OF OKLAHOMA, ex rel, The Commissioners of the Land Office, et al., Defendants.	No. C-77-58 (Filed Dec. 21, 1977)

ORDER SUSTAINING MOTION FOR JUDGMENT WHERE FACTS NOT CONTROVERTED

NOW on this 5th day of October, 1977, there comes on to be heard the motion of plaintiff, Claude R. Butler, for judgment where facts are not controverted pursuant to Rule 13 of the Rules promulgated by the Supreme Court of Oklahoma for District Courts. Plaintiff appeared by his attorneys Jack L. Rorschach, John S. Athens and Russell H. Harbaugh, Jr. and defendants, State of Oklahoma ex rel The Commissioners of the Land Office, appeared by their attorneys R. R. Williamson, Jr. and Paul DeGraffenreid.

The Court, having considered said motion, together with the verified pleadings, the briefs of the parties, certified copies of pertinent documents recorded in the office of the County Clerk of Craig County, Oklahoma, and on file in the office of defendants and the arguments of counsel, finds that plaintiff's motion should be sustained and judgment should be granted to plaintiff as prayed for in the First Cause of Action of the Petition.

The plaintiff's motion for judgment in the Second Cause of Action should be denied.

FINDINGS OF FACTS

The Court finds from the evidence presented that there is no substantial controversy as to the following facts:

1. Pursuant to Section 6, Article 1, Chapter 28, Session Laws of Oklahoma, 1937, the defendants by Notice of Public Sale of state-owned lands in Craig County, Oklahoma, offered for sale to the highest bidder at public auction to be held on October 24, 1938, various tracts of land including the following described property, to-wit:

> NW¼ and N½ N½ SW¼ of Section 10 and NW¼ less one square acre for a school in Section 11, all in Township 25 North, Range 18 East of the Indian Base and Meridian, Craig County, State of Oklahoma, according to the United States Government Survey thereof.

Said notice is recorded in Book 202 at Page 513 of the records of the County Clerk of Craig County, Oklahoma (plaintiff's Exhibit No. 1), and states in pertinent part:

> "At such sale there shall be reserved and retained unto the State forever title to fifty percentum of all the oil, gas and other mineral rights in and under all lands that may be sold. The purchaser will receive an undivided fifty percentum of all the oil, gas and other mineral rights in and under all tracts hereby offered . . . "

2. Pursuant to said Notice and sale conducted there-under, plaintiff's predecessors acquired title to the above described property by Patent from the defendants as follows:

(a) Patent, dated November 29, 1943, to T. T. Cooper as recorded in Book 189 at Page 228 of the records of the County Clerk of Craig County, State of Oklahoma, on December 22, 1943, covering in addition to other lands the following described property, to-wit:

> NW1/4 and N1/2 of N1/2 of SW1/4 in Section 10, Township 25 North, Range 18 East, Craig County, State of Oklahoma,

(plaintiff's Exhibit No. 2)

(b) Patent dated August 20, 1957, to Mark Davis, as recorded in Book 230 at Page 685 of the records of the County Clerk of Craig County, State of Oklahoma, on September 11, 1957, covering the following described property, to-wit:

> N1/2 of NW1/4 (less one acre) in Section 11, Township 25 North, Range 18 East, Craig County, State of Oklahoma,

(plaintiff's Exhibit No. 3)

(c) Patent dated December 5, 1961, to Francis Marion Davis, as recorded in Book 244 at Page 630 of the records of the County Clerk of Craig County, State of Oklahoma, on January 3, 1962, covering the following described property, to-wit:

> S1/2 of NW1/4 in Section 11, Township 25 North, Range 18 East, Craig County, State of Oklahoma,

(plaintiff's Exhibit No. 4)

In the Patent described at (a) above, the defendants reserved and retained:

> "fifty percentum of all the oil, gas and other mineral rights."

In the Patents described at (b) and (c) above, the defendant's excepted:

"an undivided fifty percentum of all the oil, gas and other minerals and mineral rights."

3. By mesne conveyances, plaintiff acquired for good consideration all of the interest of the grantees in the above described Patents in and to the property therein described.

CONCLUSIONS OF LAW

There being no dispute as to the foregoing facts, the Court concludes as a matter of law as follows:

The reservations by defendants of an undivided interest in all of the oil, gas and other mineral rights in the Patents of the above described real property to plaintiff's predecessors reserves only the stated interest in and to all the oil, gas and other minerals produced as a component or constituent of oil or gas from a drilled oil or gas well, whether hydrocarbon or nonhydrocarbon, and does not reserve any interest in any other mineral or right to produce any other mineral including coal in and under such property. There is no significant distinction between the reservation stated in the Notice of Public Sale (plaintiff's Exhibit No. 1) of an interest in "all the oil, gas and other mineral rights" and the reservation of an interest in "all the oil, gas and other minerals and mineral rights" as reserved and retained by the defendants in the Patents of the above described real property to plaintiff's predecessors (plaintiff's Exhibit Nos. 3 and 4). The language of reservation in (i) the statute providing for said reservation, (ii) the Notice by Public Sale and (iii) the Patents is clear, explicit and unambiguous and the intention of the parties may be ascertained from such writings alone without resort to any other evidence and it is not necessary to consider any other evidence relating to the intention of the parties.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that there is no substantial controversy as to any material fact and judgment should be and is hereby entered for plaintiff as prayed for in the First Cause of Action of the Petition.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the claim of defendants to an interest in the coal in and under the real property described above is without merit and constitutes a cloud upon plaintiff's title to such property which should be and is hereby removed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as against defendants and all persons claiming or to claim by, through or under them, plaintiff is the owner of good and perfect title to the above described real property subject only to the reservation in defendants of an undivided fifty per centum (50%) of all the oil, gas and such other minerals as are produced as a component or constituent of oil or gas from a drilled oil or gas well, whether hydrocarbon or nonhydrocarbon, but not reserving any other mineral or the right to produce any other mineral, including coal.

EXCEPTION ALLOWED to defendants.

APPROVED AS TO FORM:

/s/ R. H. Harbaugh, Jr.
Attorney for Plaintiff

/s/ William J. Whistler
District Judge

_____
Attorney for Defendants

APPENDIX D

ENABLING ACT

§7. Grant of lands for schools–Appropriation for school in lieu of Indian Territory lands–Sulphur Springs reservation

That upon the admission of the State into the Union sections numbered sixteen and thirty-six, in every township in Oklahoma Territory and all indemnity lands heretofore selected in lieu thereof, are hereby granted to the State for the use and benefit of the common schools, Provided, That sections sixteen and thirty-six embraced in permanent reservations for national purposes shall not at any time be subject to the grant nor the indemnity provisions of this Act, nor shall any land embraced in Indian, military or other reservations of any character, nor shall land owned by Indian tribes or individual members of any tribe be subjected to the grants or to the indemnity provisions of this Act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain: Provided, That there is sufficient untaken public land within said State to cover this grant; And Provided, That in case any of the lands herein granted to the State of Oklahoma have heretofore been confirmed to the Territory of Oklahoma for the purposes specified in this Act, the amount so confirmed shall be deducted from the quantity specified in this Act.

There is hereby appropriated, out of any money in the treasury not otherwise appropriated, the sum of five million dollars for the use and benefit of the common schools of said State in lieu of sections sixteen and thirty-

six; and other lands of the Indian Territory. Said appropriation shall be paid by the treasurer of the United States at such time and to such person or persons as may be authorized by said State to receive the same under the laws to be enacted by said State, and until said State shall enact such laws said appropriation shall not be paid, but said State shall be allowed interest thereon at the rate of three per centum per annum, which shall be paid to said State for the use and benefit of its public schools. Said appropriation of five million dollars shall be held and invested by said State, in trust, for the use and benefit of said schools, and the interest thereon shall be used exclusively in the support and maintenance of said schools: Provided, That nothing in this Act contained shall repeal or affect any Act of Congress relating to the Sulphur Springs Reservation as now defined or as may be hereafter defined or extended, or the power of the United States over it or any other lands embraced in the State hereafter set aside by Congress as a national park, game preserve, or for the preservation of objects of archaeological or ethnological interest; and nothing contained in this Act shall interfere with the rights and ownership of the United States in any land hereafter set aside by Congress as national park, game preserve or other reservation, or in the said Sulphur Springs Reservation, as it now is or may be hereafter defined or extended by law; but exclusive legislation in all cases whatsoever, shall be exercised by the United States which shall have exclusive control and jurisdiction over the same: But nothing in this proviso contained shall be construed to prevent the service within said Sulphur Springs Reservation or national parks, game preserves, and other reservations hereafter

established by law of civil and criminal processes lawfully issued by the authority of said State, and said State shall not be entitled to select indemnity school lands for the thirteenth, sixteenth, thirty-third, and thirty-sixth sections that may be embraced within the bounds of the national park, game preserve, and other reservation, or the said Sulphur Springs Reservation, as now defined or may be hereafter defined. June 16, 1906, c. 3335, §7, 34 Stat. 272.

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§8. University, etc., grants–Allotments–Use of lands and proceeds–Lands for public institutions and buildings–Mineral and oil lands

That section thirteen in the Cherokee Outlet, the Tonkawa Indian Reservation and the Pawnee Indian Reservation, reserved by the President of the United States by proclamation issued August nineteenth, eighteen hundred and ninety-three,[1] opening to settlement the lands, and by any Act or Acts of Congress since said date and section thirteen in all other lands which have been or may be opened to settlement in the Territory of Oklahoma, and all lands heretofore selected in lieu thereof, is hereby reserved and granted to said State for the use and benefit of the University of Oklahoma and the University Preparatory School, one-third; of the normal schools now established or hereafter to be established, one-third; and of the Agricultural and Mechanical College and the Colored Agricultural Normal University, one-third: The said

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[1] No. 5, 28 Stat. 1222.

lands or the proceeds thereof as above apportioned shall be divided between the institutions as the Legislature of said State may prescribe: Provided, That the said lands so reserved or the proceeds of the sale thereof shall be safely kept or invested and held by the said State and the income thereof, interest, rentals or otherwise, only shall be used exclusively for the benefit of said educational institutions. Such educational institutions shall remain under the exclusive control of said State and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes, or the income or rentals thereof, shall be used for the support of any religious or sectarian school, college or university.

That section thirty-three, and all lands heretofore selected in lieu thereof, heretofore reserved under said proclamation, and Acts for charitable and penal institutions and public buildings, shall be apportioned and disposed of as the Legislature of said State may prescribe.

Where any part of the lands granted by this Act to the State of Oklahoma are valuable for minerals, gas and oil, such lands shall not be sold by the said State prior to January first, nineteen hundred and fifteen; but the same may be leased for periods not exceeding five years by the State officers duly authorized for that purpose, such leasing to be made by public competition after not less than thirty days advertisement in the manner to be prescribed by law, and all such leasing shall be done under sealed bids and awarded to the highest responsible bidder. The leasing shall require and the advertisement shall specify in each case a fixed royalty to be paid by the successful bidder, in addition to any bonus offered for the lease, and all proceeds from leases shall be covered into the fund to

which that shall properly belong, and no transfer or assignment of any lease shall be valid or confer any right in the assignee without the consent of the proper State authorities in writing: Provided, however, That agricultural lessees in possession of such lands shall be reimbursed by the mining lessees for all damage done to said agricultural lessees' interest therein by reason of such mining operations. The Legislature of the State may prescribe additional legislation governing such leases not in conflict herewith. June 16, 1906, c. 3335,§8, 34 Stat. 273.

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§9. Disposal of common school lands–School fund from proceeds–Leases, etc.

That said sections sixteen and thirty-six, and lands taken in lieu thereof, herein granted for the support of the common schools, if sold, may be appraised and sold at public sale in one hundred and sixty acre tracts or less, under such rules and regulations as the Legislature of the said State may prescribe, preference right to purchase at the highest bid being given to the lessee at the time of such sale, the proceeds to constitute a permanent school fund the interest of which only shall be expended in the support of such schools. But said lands may, under such regulations as the Legislature may prescribe, be leased for periods not to exceed ten years; and such lands shall not be subject to homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only. June 16, 1906, c. 3335, §9, 34 Stat. 274.

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§10. University and public institution lands–Sales or leases–Appraisal of improvements–Payment by purchaser

That said sections thirteen and thirty-three aforesaid, if sold, may be appraised and sold at public sale, in one hundred and sixty acre tracts or less, under such rules and regulations as the Legislature of said State may prescribe, preference right to purchase at the highest bid being given to the lessee at the time of such sale, but such lands may be leased for periods of not more than five years, under such rules and regulations as the Legislature shall prescribe, and until such time as the Legislature shall prescribe such rules these and all other lands granted to the State shall be leased under existing rules and regulations, and shall not be subject to homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for designated purposes only, and until such time as the Legislature shall prescribe as aforesaid such lands shall be leased under existing rule: Provided, That before any of said land shall be sold, as provided in sections nine and ten of this Act,[1] the said lands and improvements thereon shall be appraised by three disinterested appraisers, who shall be non-residents of the county wherein the land is situated, to be designated as the Legislature of said State shall prescribe, and the said appraisers shall make a true appraisement of said lands at the actual cash value thereof, exclusive of improvements, and shall separately appraise all permanent improvements thereof at their fair and reasonable value, and in case the leaseholder does not become the

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[1] This section and section 9, ante.

purchaser, the purchaser at said sale shall, under such rules and regulations as the Legislature may prescribe, pay to or for the leaseholder the appraised value of said improvements and to the State the amount bid for the said lands, exclusive of the appraised value of improvements; and at said sale no bid for any tract at less than the appraisement thereof shall be accepted. June 16, 1906, c. 3335, §10, 34 Stat. 274.

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§11. Use of five per cent fund for common schools

That an amount equal to five per centum of the proceeds of the sales of public lands lying within said State shall be paid to the said State to be used as a permanent fund, the interest only of which shall be expended for the support of the common schools within said State. June 16, 1906, c. 3335, §11, 34 Stat. 274

§12. Land in lieu of internal improvements and swamp-land grants

That in lieu of the grant of land for the purposes of internal improvements made to new States by the eighth section of the Act of September fourth, eighteen hundred and forty-one,[1] which section is hereby repealed as to said State, and in lieu of any claim or demand of the State of Oklahoma under the Act of September twenty-eighth, eighteen hundred and fifty,[2] and section twenty-four

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[1] 5 Stat. 455, c.16 (see 43 U.S.C.A. § 857).

[2] 9 Stat. 519, c.84 (43 U.S.C.A. §§ 982-984).

hundred and seventy-nine of the Revised Statutes,[3] making a grant of swamp and overflowed lands, which grant it is hereby declared is not extended to said State of Oklahoma, the following grant of land is hereby made to said State from public lands of the United States within said State, for the purposes indicated, namely: For the benefit of the Oklahoma University School, two hundred and fifty thousand acres; for the benefit of the University Preparatory School, one hundred and fifty thousand acres; for the benefit of the Agridcultural and Mechanical College two hundred and fifty thousand acres; for the benefit of the Colored Agricultural and Normal University, one hundred thousand acres; for the benefit of normal schools now established or hereafter to be established, three hundred thousand acres. The lands granted by this section shall be selected by the board for leasing school lands of the Territory of Oklahoma immediately upon the approval of this Act. Said selections as soon as made shall be certified to the Secretary of the Interior, and the lands so selected shall be thereupon withdrawn from homestead entry. June 16, 1906, c. 3335, §12, 34 Stat. 274.

OKLAHOMA CONSTITUTION
Art. 6, EXECUTIVE DEPARTMENT
COMMISSIONERS OF THE LAND OFFICE

§32. Membership and functions

A. The Governor, Lieutenant Governor, State Auditor, Superintendent of Public Instruction and the

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[3] 43 U.S.C.A. § 982.

President of the Board of Agriculture shall constitute the Commissioners of the Land Office, who shall have charge of the sale, rental, disposal and managing of the school lands and other public lands of the state, and of the funds and proceeds derived therefrom, under rules and regulations prescribed by the Legislature.

B. Should the offices of State Examiner and Inspector and State Auditor be consolidated in the office of State Auditor and Inspector, the State Auditor shall be replaced as a member of the Commissioners of the Land Office by the State Auditor and Inspector. Should the offices not be so consolidated, the membership of the Board shall remain as prescribed in subsection A of this section.

Amended by State Question No. 514, Legislative Referendum No. 214, adopted at election held July 22, 1975, eff. Jan. 8, 1979.

ARTICLE XI
STATE AND SCHOOL LANDS

Sec.

1. Acceptance of grants and donations–Pledge of faith of state.

2. Permanent school fund–How constituted–Use–Reimbursement for losses.

3. Interest and income–Use and apportionment.

4. Sale of lands for charitable, penal, educational and public purposes.

5. University and college lands–Control of institutions–Diversion of funds.

6. Investment of permanent common school and other educational funds.

Cross References

Stautory provisions, see 64 Okl. St. Ann.

§1. Acceptance of grants and donations–Pledge of faith of state

The State hereby accepts all grants of land and donations of money made by the United States under the provisions of the Enabling Act, and any other Acts of Congress, for the uses and purposes and under the conditions, and under the limitations for which the same are granted or donated; and the faith of the State is hereby pledged to preserve such lands and moneys and all moneys derived from the sale of any of said lands as a sacred trust, and to keep the same for the uses and purposes for which they were granted or donated.

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§2. Permanent school fund–How constituted–Use–Reimbursement for losses

All proceeds of the sale of public lands that have heretofore been or may be hereafter given by the United States for the use and benefit of the common schools of this State, all such per centum as may be granted by the United States on the sales of public lands, the sum of five million dollars appropriated to the State for the use and benefit of the common schools in lieu of sections sixteen and thirty-six, and other lands of the Indian Territory, the

proceeds of all property that shall fall to the State by escheat, the proceeds of all gifts or donations to the State for common schools not otherwise appropriated by the terms of the gifts, and such other appropriations, gifts, or donations as shall be made by the Legislature for the benefit of the common schools, shall constitute the permanent school fund, the income from which shall be used for the maintenance of the common schools in the State. The principal shall be deemed a trust fund held by the State, and shall forever remain inviolate. It may be increased, but shall never be diminished. The State shall reimburse said permanent school fund for all losses thereof which may in any manner occur, and no portion of said fund shall be diverted for any other use or purpose.

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§3. Interest and income–Use and apportionment

The interest and income of the permanent school fund, the net income from the leasing of public lands which have been or may be granted by the United States to the State for the use and benefit of the common schools, together with any revenues derived from taxes authorized to be levied for such purposes, and any other sums which may be added thereto by law, shall be used and applied each year for the benefit of the common schools of the State, and shall be, for this purpose, apportioned among and between all the several common school districts of the State in proportion to the school population of the several districts, and no part of the fund shall ever be diverted from this purpose, or used for any other

purpose that the support and maintenance of common schools for the equal benefit of all the people of the State.

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§4. Sale of lands for charitable, penal, educational and public purposes

All public lands set apart to the State by Congress for charitable, penal, educational, and public building purposes, and all lands taken in lieu thereof, may be sold by the State, under such rules and regulations as the Legislature may prescribe, in conformity with the regulations of the Enabling Act.

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§5. University and college lands–Control of institutions–Diversion of funds

Section thirteen in every portion of the State, which has been granted to the State, shall be preserved for the use and benefit of the University of Oklahoma and the University Preparatory School, one-third; of the normal schools now established, or hereafter to be established, one-third; and of the Agricultural and Mechanical College and Colored Agricultural and Normal University, one-third. The said lands or the proceeds thereof as above apportioned to be divided between the institutions as the Legislature may prescribe: Provided, That the said lands so reserved, or the proceeds of the sale thereof, or of any indemnity lands granted in lieu of section thirteen shall be safely kept or invested and preserved by the State as a trust, which shall never be diminished, but may be added

to, and the income thereof, interest, rentals, or otherwise, only shall be used exclusively for the benefit of said educational institutions. Such educational institutions shall remain under the exclusive control of the State and no part of the proceeds arising from the sale or disposal of any lands granted for educational purposes, or the income or rentals thereof, shall be used for the support of any religious or sectarian school, college, or university, and no portion of the funds arising from the sale of sections thirteen or any indemnity lands selected in lieu thereof, either principal or interest, shall ever be diverted, either temporarily or permanently, from the purpose for which said lands were granted to the State.

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§6. Investment of permanent common school and other educational funds

The permanent common school and other educational funds shall be invested in first mortgages upon good and improved farm lands within the state (and in no case shall more than fifty per centum (50%) of the reasonable valuation of the lands without improvements be loaned on any tract), Oklahoma State bonds, county bonds of the counties of Oklahoma, school district bonds of the school districts of Oklahoma, promissory notes evidencing federal and state insured loans made to students under any federal or State of Oklahoma insured student loan program, and United States bonds, preference to be given to the securities in the order named. The said funds may also be invested in deposits in federally

insured financial institutions or trust companies in Oklahoma to the extent such deposit is insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration.

The Legislature shall provide the manner of selecting the securities aforesaid, prescribe the rules, regulations, restrictions, and conditions upon which the funds aforesaid shall be loaned or invested, and do all things necessary for the safety of the funds and permanency of the investment.

Said funds may also be invested in loans secured by first mortages bearing interest at the rate, to be same for all loans made during same period, of not less than three per centum (3%) per annum, given by any honorably discharged member of the armed forces of the United States, or of an ally thereof, who served in World War I, World War II, Korean War or the Viet Nam Conflict, or any future war or conflict in which the United States may become engaged, and a resident of the State of Oklahoma for not less than five (5) years, on improved or unimproved farm lands within this state. In no case shall more than ninety-three and one-half per centum (93 1/2%) of the reasonable value of the land and improvements be loaned on any tract. Any such member, before acquiring title to such a tract of land, may apply for a loan of money to be secured by such a mortgage, said loan to be advanced and mortgage executed when and as he secures title to said tract. Said loan and mortgage securing the same shall be negotiated and executed, until otherwise provided by law, under rules and regulations prescribed

by the Commissioners of the Land Office; provided, however, that the loan may not be transferred or assigned within five (5) years.

Amended by State Question No. 599, Legislative Referendum No. 261, adopted at election held on Aug. 26, 1986.

OKLAHOMA STATUTES, TITLE 64

§82. Manner of disposal of lands–Collection of deficiency judgments

All lands acquired by foreclosure of mortgages or the acceptance of deeds and all lands heretofore sold under a Certificate of Purchase Contract where said Certificate of Purchase has been canceled, and all deficiency judgments owned by the Commissioners of the Land Office, shall be disposed of in the following manner.

(a) Upon resolution adopted by the Commissioners of the Land Office, any or all lands acquired by foreclosure of mortgage or the acceptance of deeds or lands heretofore sold under Certificate of Purchase Contract, where said Certificate of Purchase has been canceled, or all land acquired by original grant, except original grant land which can be used for grazing purposes only, may be sold by the Commissioners of the Land Office for cash or on sales contracts to be denominated, "Certificates of Purchase", providing for an initial payment of not less than ten (10%) per centum of the total purchase price, at the discretion of the Commissioners, the balance to be paid in not more than forty (40) equal annual payments with deferred payments drawing interest at the rate of three (3%) per cent per annum. Notice of the sale of such lands

as may be offered for sale shall be published in five (5) consecutive issues in at least one weekly newspaper of general circulation in the county in which such tract or tracts of land are situated. Such notice shall give a brief description of the lands and improvements located thereon and the appraised value of both such lands and improvements, the time, place and terms of sale. Said lands shall be sold to the highest responsible bidder at public auction. No tract shall be sold for less than ninety (90%) per centum of the appraised value thereof, and the same shall be appraised prior to sale by three duly authorized appraisers of the Commissioners of the Land Office. In all cases the Commissioners of the land Office shall have the right to reject any and all bids. Said Commissioners are hereby authorized to pay for the cost of conducting said sales from the proceeds thereof.

(b) The State shall have first lien upon all lands sold, together with all improvements and appurtenances thereunto belonging, until all payments, being both principal and interest, are made thereon; and upon such payments being made, the Commissioners of the Land Office shall in forms of law, execute to each purchaser, as in this article provided, a patent in fee simple; provided, that a Certificate of Purchase reciting the conditions of such purchase shall be issued to every purchaser under this article immediately upon execution of the contract of purchase, and such Certificate of Purchase shall be entitled to record, as evidence of the same, under the provisions of the law of conveyance. Provided, that it shall be the duty of the Tax Assessor of each county wherein said lands are situated to place on the tax rolls all lands held under said Certificate of Purchase; said

taxes to be paid by the purchaser named in said Certificate of Purchase or the assignee of said purchaser.

(c) The Commissioners of the Land Office are hereby authorized to subdivide any tract or tracts of land, or to combine any tracts of land, subject to sale under the provisions of this Act, when in their discretion it is deemed that such subdivision or combination would induce more purchasers for such sales.

(d) The Commissioners of the Land Office shall reserve and retain forever the title to not less than forty (40%) per centum of all the oil, gas and other mineral rights in and under all lands to be sold; provided further, that the Commissioners of the Land Office are empowered to join in the execution of any oil, gas, or mineral lease on school lands, which have been sold and in which they have retained mineral interest, at their own discretion and without the necessity of advertising as required on State-owned lands. Such reservation is to be set out and included in all Certificates of Purchase and Patents issued to cover lands hereafter sold by the Commissioners of the Land Office. Provided, that the provisions of this Section shall not apply to any State-owned lands which the Commissioners of the Land Office may, by resolution duly adopted, find to be suitably situated for townsite developmental purposes. Any such land may be by the Commissioners of the Land Office, platted and sold in separate town lots or in entire tracts at the discretion of the Commissioners, without reservation as to the mineral rights, and Patent conveying the full fee simple title may be given the purchaser upon full payment of the purchase price. Provided that the provision hereof, with reference to the reservation and retention of

all or part of the oil, gas and mineral rights in and under State Lands, shall not apply to any State-owned lands which may be sold by the Commissioners of the Land Office, at any voluntary sale, to any public or municipal corporation, board, commission, department, agency or instrumentality for the construction, development and operation of any hydroelectric power, flood control, reclamation or irrigation project; for any needful public buildings, or for any other public use or purpose. Provided however, that in the case of any lands being sold without the reservation of any mineral rights thereto, such sale shall be held only upon resolution adopted by a unanimous vote of the Commission, following thirty days notice in writing to the Governor of the State of Oklahoma, of the meeting of said Commission at which such resolution is to be considered, and any such conveyance shall be made only with the written consent of the Governor endorsed thereon.

(e) When the lands, mortgaged to the State as security for a loan, have been acquired through foreclosure proceedings, or by deeds thereto accepted by the Commissioners of the Land Office and sold, the amount for which same is sold shall be applied as follows: Any payment received at the time of the sale and all unpaid balance shall, when and as collected, be apportioned as follows: 1st the entire balance of the principal of the loan shall be transferred into the fund from which the loan is made; 2nd, interest; 3rd, cost; 4th, fees earned, and the remainder, if any, shall be paid into and become a part of the fund from which the loan was made.

(f) Diligent effort shall be made by the Commissioners of the Land Office to collect all deficiency judgments now held by the State or which may hereafter be rendered in favor of the State, and immediately after the passage and approval of this Act, and after procuring any deficiency judgment, they shall cause execution to be issued thereon and placed in the hands of the sheriff of the proper county for service. In addition to the return of such execution now required by law, the sheriff shall mail to the Commissioners of the Land Office a duplicate of his return of such execution.

(g) From any moneys collected upon a deficiency judgment there shall be paid: 1st, any balance of the principal, included therein; 2nd, interest; 3rd, costs; 4th, fees earned, and the remainder, if any, shall be paid into and become a part of the fund from which the loan was made.

(h) Upon the death of any judgment debtor, if his estate be administered, the Commissioners shall cause proper claim to be made in the probate court for the amount due the State upon the deficiency judgment against said debtor and any sum collected shall be applied as provided for collections hereinabove. Should all the judgment debtors in any deficiency judgment die without estate, the deficiency judgment shall be charged off and no longer carried as an asset in the department. Such death shall be noted upon the record of judgments in the office and the transaction closed. The same procedure shall be followed in cases where administrations are had and judgment cannot be collected from the estate.

(i) When executions are returned, "no property found," or the property of the defendant is exhausted and the balance of the judgment unsatisfied, the judgment may, at the discretion of the Commissioners of the Land Office, be advertised in the county wherein such judgment was obtained, and sold at public outcry to the highest and best bidder for cash. In case of a sale of any such judgment, the Commissioners of the Land Office shall cause notice of such sale, such notice to contain the pertinent facts, to be published in three consecutive issues of a newspaper of general circulation in the county wherein such judgment was obtained, and will be sold, such sale to be held at a specified hour at the front door of the court house in such county. At any such judgment sale, the Commissioners of the Land Office shall reserve the right to reject any and all bids. Any judgment that may be sold hereunder shall be assigned to the purchaser, without recourse, by the Commissioners of the Land Office, and any deficiency existing thereon shall be charged off and no longer carried as an asset of the Department.

(j) Rules and regulations governing the sale of any lands to be sold under the terms and provisions of this Act, not inconsistent herewith, may be made by the Commissioners of the Land Office. Laws 1935, p. 113, §19; Laws 1937, p. 128, §6; Laws 1939, p. 133, §1.

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§94. Sale of lands authorized

That the Commissioners of the Land Office be requested and are hereby authorized by the Legislature to

offer for sale and sell all lands acquired by foreclosure of mortgages and by acceptance of warranty deeds under the rules and regulations hereinafter set out. Laws 1939, p. 137, §2.

Library references: Public Lands 165 1/2; C.J.S. Public Lands §235 et seq.

§95. Manner of sale

All sales of real property so had, under the provisions of this Act shall be made pursuant to notice by publication in a newspaper of general circulation in the county wherein the land lies, such notice shall be published in three (3) successive issues immediately before the date of such sale; which notice shall contain the legal description of each tract to be offered for sale, and the appraised value thereof, and shall advertise that same will be sold at auction to the highest and best bidder at the front door of the court house; provided, however, that no tract may be sold for less than ninety (90) per centum of the appraised value, at a date and time fixed therein. The purchaser at such sale shall be required to make a down payment of not less than ten per centum (10%) of the total purchase price bid; provided, further, that such purchaser must agree personally to farm and till the soil of the farm purchased under this Act for not less than five (5) years following the issuance of the Certificate of Purchase.

(a) All such notices and sales of land shall be conducted on geographical basis of counties. Laws 1939, p. 137, §3; Laws 1943, p. 156, §1.

§96. Sales contract–Certificate of purchase–Terms–Patent

Such land shall be sold by the Commissioners of the Land Office on sales contract, to be denominated Certificate of Purchase, providing for initial payment of at least ten per centum (10%) of the total purchase price, or in a greater sum as may be fixed by the Commissioners under the provisions of Section 1 hereof, the balance to be paid over a period of twenty-five (25) years on the amortized plan, with interest at the rate of three per centum (3%) per annum, and which provides for the payment twenty-five (25) equal annual principal and interest installments so as to liquidate such sales contract in full at maturity. Provided, however, that Veterans who have been honorably discharged from the Armed Forces of the United States shall be permitted to purchase such land upon a basis of an initial payment of five per centum (5%) of the total purchase price, the balance to be paid as above provided.

(a) All certificates of purchase issued under this Act shall include an agreement by the purchaser that he will follow such suggestions for better agricultural production and soil conservation as may be made by the Soil Conservation Division of the Commissioners of the Land Office. All lands sold upon Certificate of Purchase under the provisions of this Act shall be subject to taxation, and it shall be the duty of the County Assessor of each county wherein said lands are situated to place all lands so sold upon the tax rolls, such taxes to be paid by the holder of the Certificate of Purchase.

(b) No Certificate of Purchase issued under the provisions of this Act shall be transferred or assigned for a period of five (5) years after the date of the issuance thereof without the written consent of the Commissioners of the Land Office, except any transfer or assignment that might be caused by inheritance or caused by devise under will or by the laws of descent and distribution. After such five-year period, no transfer or assignment of any Certificate of Purchase shall be valid until the same be approved by the Commissioners of the Land Office.

(c) Upon the full payment of the purchase price of any tract of land sold under the provisions of this Act, the Commissioners of the Land Office shall immediately execute and deliver to the purchaser thereof a patent thereto in fee simple; provided, however, the Commissioners of the Land Office shall, in all cases, reserve and retain forever title to fifty per centum (50%) of all the oil, gas and other mineral rights in and under all lands so sold. Laws 1939, p. 137, §4; Laws 1943, p. 156, §2; Laws 1951, p. 181, §1.

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No. 88-504

In The

Supreme Court of the United States

October Term, 1988

THE STATE OF OKLAHOMA *ex rel.*
COMMISSIONERS OF THE LAND OFFICE

Petitioner,

vs.

CLAUDE R. BUTLER

Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE OKLAHOMA SUPREME COURT

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Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE OKLAHOMA SUPREME COURT

I. THE CASE INVOLVES NO SUBSTANTIAL FEDERAL QUESTION

This case presents a single question: What is the meaning of a reservation of "oil, gas and other mineral rights" in deeds to predecessors of respondent[1] from the State of Oklahoma? The question is thus one involving the Oklahoma Constitution and Statutes, Oklahoma conveyances, land in Oklahoma and Oklahoma's law pertaining to real estate matters; a case whose final answer

[1] Respondent, Claude R. Butler, is an individual. Rule 28.1 does not apply.

should come from the Oklahoma Supreme Court. *Miller v. Anderson*, 150 U.S. 132, 14 S.Ct. 52, 37 L.Ed. 1028 (1893). And, in fact, that court has given its answer. *See State ex rel Comm'rs of Land Office v. Butler*, 753 P.2d 1334 (Okla. 1987), which is reproduced in full at Appendix A-1 of the petition for certiorari filed herein. There is no substantial federal question presented by the petition for a writ of certiorari and the petition should be dismissed.

The jurisdiction of the Court to hear this case on a writ of certiorari to the Supreme Court of the State of Oklahoma is derived from 28 U.S.C. § 1257(a) (1988) and exists "where any title, right, privilege or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

Petitioner's only contention that this case presents a federal question for review under the above statute is a claim that the courts of the State of Oklahoma have so misinterpreted the "oil, gas and other mineral rights" reservation in deeds from the State as to sanction a breach of a trust created by the Enabling Act, Act of Congress June 16, 1906, 34 Stat. 267. The Act conveyed certain U.S. lands to the State of Oklahoma to be held in trust for common schools, universities and other educational and public institutions. The pertinent provisions of the Enabling Act are set forth as Appendix D to the petition for certiorari filed by the petitioner.

The Act contemplated, in broadest terms, the eventual sale of portions of the lands originally granted to the State by the Act. Moreover, the lands involved in this case were not lands conveyed to the State by the United

States pursuant to the Act. Instead, funds available to the Land Commissioners of the State have been invested from time to time in first mortgage loans upon agricultural lands. Upon default, the instant and other lands were acquired by the Land Commissioners in connection with mortgage foreclosures. Subsequently, pursuant to local statutory authority, the instant lands were sold by the Land Commissioners to respondent's predecessors by conveyances which reserved unto petitioner an undivided fifty percent of all oil, gas and other mineral rights.

In this action, respondent, as successor owner, commenced suit to quiet title as to the coal underlying the subject lands because petitioner had asserted ownership of a one-half interest in such coal by virtue of the subject reservation. At all levels of inquiry, petitioner principally argued that the subject reservation was ambiguous so as to permit the introduction of extrinsic evidence. However, the trial court and both state appellate courts decided in respondent's favor, determining that as a matter of law the subject reservation was not ambiguous, that consequently extrinsic evidence was not admissible and, further, that under Oklahoma law, the reservation included "only oil and gas and those minerals produced as constituents and components thereof." *State ex rel. Comm'rs of Land Office v. Butler*, 753 P.2d at 1337.

Again in the instant petition, petitioner posits the same questions for review by this Court that it has repeatedly raised and had rejected by the courts below. Now, however, petitioner casts these issues of local law as coming within the ambit of the Enabling Act, thereby

seeking to create a federal question worthy of consideration by this Court. Respondent respectfully submits that the subject reservation was created by state statutes, rather than by federal law, and that construction thereof by local courts should not be disturbed by this Court.

II. PROCEDURES FOR SALE OF LANDS ARE NOT SPECIFIED IN ENABLING ACT

The Enabling Act clearly permitted the State to sell lands covered by the grant, imposing procedural restrictions only as to particular lands earmarked for particular purposes. Even these restrictions were limited and largely involved only requirements of appraisal and public sale. In general, the Enabling Act left it to the State to establish the procedures for the sale of lands granted by the Act. Section 8 of the Act, for example, provides that certain of these original lands "shall be apportioned and disposed of as the Legislature of said State may prescribe." Section 8 specifically provides that where lands granted by the Enabling Act "are valuable for minerals, gas and oil, such lands shall not be sold by the said State prior to January first, nineteen hundred and fifteen. . . ." Conversely, the Act clearly allows for sales of such valuable mineral lands after January 1, 1915, and says nothing about the State reserving any interest in minerals underlying such lands.

Section 9 of the Act directs how sales of those lands "herein granted for the support of the common schools" shall proceed and provides only that such lands, "if sold, may be appraised and sold at public sale, in one hundred and sixty acre tracts, or less, under such rules and regulations as the Legislature of the said State may prescribe. . . ."

As previously stated, the lands involved in this case are not even the lands specifically referred to in the Enabling Act, which is the only source of a federally protected right which can be asserted in this case. These lands were subsequently acquired by the State through mortgage foreclosures. However, the basic restrictions of appraisal and public sale contained in the Enabling Act, though directed specifically to sale of the lands granted by the Act, have still been consistently followed by the Land Commissioners in all sales involved herein. Importantly, the Act contains no provisions which specify in any particular manner the method by which lands were to be sold by the Land Commissioners. All such matters were to be determined by the State legislature.

Section 10 is another example in which the Enabling Act imposes requirements that particular lands (not those involved in this case) be sold only "at public sale" but does not otherwise provide limitations on the methods of sale of such lands or of any others.

The basic policy of the Act is expressed in Section 8 relating to "Section thirty-three" lands (reserved for charitable and penal institutions and public buildings) which states that such lands "shall be apportioned and disposed of as the Legislature of said State may prescribe." The State was obviously expected to sell lands from time to time, even lands in the original grant, as well as any other lands which might be acquired as trust property.

The only requirements of the Enabling Act pertaining to land sales involve appraisal and public sale. The lands in this case were sold to respondent's predecessors at public sale pursuant to state statutes following an

appraisal process established by the Land Commissioners and there is no suggestion that the sales procedure involved any impropriety. Both requirements of the Act were met as to the instant lands, even though such requirements were not specifically applicable to such lands. Significantly, there was no requirement in the Enabling Act that the State reserve any minerals in connection with any sale.

Finally, it is an accepted tenet of the law of trusts that when a trustee is authorized to sell trust property and no specific restrictions on the manner of sale have been imposed, the trustee may exercise discretion in the sale to assure the best price. *See* G. Bogert, *Trusts and Trustees*, § 745 (rev. 2d ed. 1982). Courts of equity will not generally substitute their judgment for that of a trustee in such cases unless there is evidence of self-dealing, procedural defects, improprieties, bad faith or a sale price disproportionate to the real value of the property. In this case the appraisal and public bidding procedures presumably operated to bring a fair price and there is no suggestion of self-dealing or other impropriety.

The emphasis in the petition upon the term "sacred" trust seems to suggest that some new rule of the law of trusts not applicable to other trusts may apply to sacred trusts as if involving rituals, incense and arcane incantations. The word "sacred" does not appear in the Oklahoma Enabling Act and emerges only in the Oklahoma Constitution. This is perhaps symptomatic of the often flamboyant character of the chief architect of the document, Oklahoma's first Governor, "Alfalfa Bill" Murray. Again, no substantial federal question is raised and an

interpretation of the Oklahoma Constitution properly rests with the Oklahoma Supreme Court.

III. DEED RESERVATION PURSUANT TO STATE STATUTE DOES NOT RAISE A FEDERAL QUESTION

The instant sales were made and the patents were delivered reserving unto the State, pursuant to State statute, an undivided one-half of the "oil, gas and other mineral rights." Taken alone, the term "minerals" or "mineral rights" is very broad and encompasses rock, sand, mica, the soil itself and minerals as exotic as beryllium, titanium and argon. As the Supreme Court of Oklahoma correctly observed: " 'Oil, gas and other minerals' is not a description of the entire mineral estate." *State ex rel. Comm'rs of Land Office v. Butler*, 753 P.2d 1334, 1337.

Of greater importance, the term "oil, gas and other mineral rights" and similar phrases have been repeatedly adjudged in Oklahoma to be limited to those minerals so related to oil and gas as to be essentially components of oil and gas. *Barker v. Campbell-Ratliff Land Co.*, 64 Okla. 249, 167 P. 468 (1917), *Wolf v. Blackwell Oil & Gas Co.*, 77 Okla. 81, 186 P. 484 (1920); *State v. Hendrix*, 196 Okla. 596, 167 P.2d 43 (1946); and *Panhandle Cooperative Royalty Co. v. Cunningham*, 495 P.2d 108 (Okla. 1971). The angst and anguish expressed in the opinions of the Supreme Court of Oklahoma were concerned with the interpretation of these words in the light of its own precedents. The focus of the concerns of the Supreme Court of Oklahoma was upon whether or not words of grant or of reservation in Oklahoma land conveyances referring to "oil, gas and other minerals" or to "oil, gas and other mineral rights"

were, as a matter of Oklahoma jurisprudence, limited by the established common law concept of *ejusdem generis* to petroleum related minerals, whether that rule is one of interpretation or construction and whether or not parol evidence should have been admitted in this particular case. This is Corpus Juris and Hornbook stuff and hardly so substantial as to compel the studied attention of the United States Supreme Court.

Where, then, is the substantial federal question traditionally and wisely required to engage the Court's attention to this case? Petitioner urges that its germ is found in *Lassen v. Arizona*, 385 U.S. 458, 87 S.Ct. 548, 17 L. Ed. 2d 515 (1967), in which the State of Arizona had taken, for no compensation whatsoever, highway easements and material sites on lands donated by the United States to the State of Arizona under the New Mexico-Arizona Enabling Act, which is similar but by no means identical to the Oklahoma Enabling Act. In that case, the Arizona courts had applied rigidly a presumption that the creation of a highway always enhances the value of the remaining land by an amount at least, or more than, the value of the lands taken.

However, *Lassen* does not apply to these facts. *See State ex rel. Comm'rs of Land Office v. Butler*, 753 P.2d at 1339. In this case, the lands were appraised prior to sale, advertised for public bidding and sold in accordance with the applicable statutes. It is not suggested by petitioner that any improprieties were involved in these sales; nor were these sales in which the purchaser was the State itself or one of its agencies.

Miller v. Anderson, 150 U.S. 132, 14 S.Ct. 52, 37 L.Ed. 1028 (1893), has long stood for the proposition that interpretation of a state statute is purely a local question and involves nothing of a federal character. *Miller* came to the Court on writ of error from the supreme court of Alabama and involved public lands that had been made available by Congress to the State of Alabama for construction of railroads. Certain of these lands were granted, pursuant to state statute, to a railway company and such lands were, in turn, mortgaged back to the state to secure a loan. The rail company subsequently defaulted on the loan; the lands were reacquired by the state and sold pursuant to state statute. A competing title claimant claimed to have derived superior title directly from the rail company, alleging that the Alabama statute and the mortgage both allowed the rail company to sell the lands "in accordance with the acts of congress granting the same." The state supreme court concluded that the power of sale was conditioned upon satisfactory release of the preexisting mortgage which, of course, had not occurred and, further, that a sale by the rail company could only be effected after certification from the state to the secretary of interior as prescribed by the act of Congress. Because no such certificate had issued, the state court determined that, under the applicable state statute and the terms of the mortgage, the purported sale by the rail company was void.

In dismissing the appeal, the U.S. Supreme Court stated:

> *Now, whether that was a correct construction or not of the [state] act of 1870, and the reservation of the mortgage, is purely a local question, and involves nothing of a federal character.* The question is not what rights passed to the state under the acts of congress, but what authority the railroad company had under the statute of the state. The construction of such a statute is a matter for the state court, and its determination thereof is binding on this court. The fact that the state statute and the mortgage refer to certain acts of congress as prescribing the rule and measure of the rights granted by the state does not make the determination of such rights a federal question. . . .The inquiry along federal lines is only incidental to a determination of the local question of what the state has required and prescribed. The matter decided is one of state rule and practice. The facts by which that state rule and practice are determined may be of a federal origin.

Miller v. Anderson, 150 U.S. at 136, 14 S.Ct. at 54, 37 L.Ed. at 1029 (emphasis added).

In the instant case, Oklahoma statutes, not a federal statute, established the procedure for sale of the subject lands recovered by the State as the result of mortgage foreclosures. The Oklahoma Supreme Court has decided that all sale proceedings herein were in conformity with such statutes and that the words of the subject reservation in the conveyances by the State into respondent's chain of title followed the statutory language verbatim.

With respect to such reservation, the Oklahoma Supreme Court concluded:

"We therefore reaffirm our consistent position that 'oil, gas and other minerals' and similar phrases are not ambiguous. They do not include coal or other unspecified minerals."

State ex rel. Comm'rs of Land Office v. Butler, 753 P.2d at 1339.

CONCLUSION

The petition for writ of certiorari fails to present any substantial federal question and should be dismissed.

Respectfully submitted,

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